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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 213.

JOHN S. JENCKS, WILLIAM H. JENCKS, AND CHARLES RHOADES, EXECUTORS OF EVAN RANDOLPH, DECEASED, APPELLANTS,

vs.

THE QUIDNICK COMPANY; GORHAM P. POMROY, ASSIGNEE, &c.; ZECHARIAH CHAFEE, TRUSTEE AND ASSIGNEE OF THE A. AND W. SPRAGUE MANUFACTURING COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

FILED OCTOBER 18, 1886.

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a Circuit Court of the United States, District of Rhode Island.
In Equity.

EVAN RANDOLPH
vs.
QUIDNICK COMPANY. } No. 2059.

Vol. I.

William H. Baker, Benjamin F. Butler, A. and A. D. Payne, counsel for complainant.

Rathbone Gardner, C. Frank Parkhurst, Charles H. Parkhurst, James Tillinghast, Charles Hart, Benjamin F. Thurston, counsel for defendant.

1 CIRCUIT COURT OF THE UNITED STATES, *District of Rhode Island,* } *sc:*

EVAN RANDOLPH
vs.
QUIDNICK CO. *et als.* } In Equity. No. 2059.

Bill of Complaint (*Filed August* 2, 1883) *and Amended Bill of Complainant* (*Filed August* 31, 1883).

To the honorable the judges of the circuit court of the United States within and for the district of Rhode Island, sitting in equity:

Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, a citizen of said State of Pennsylvania, brings this his bill of complaint against the Quidnick Company, a corporation duly created by the General Assembly of the State of Rhode Island and located and doing business in said State of Rhode Island, a citizen of said State of Rhode Island; against the A. & W. Sprague M'f'g Co., a corporation duly created by the General Assembly of said State of Rhode Island and located and doing business in said State of Rhode Island, a citizen of said State of Rhode Island; against William Sprague, of the town of South Kingston, in the county of Washington and said State of Rhode Island, a citizen of said State of Rhode Island; against Amasa Sprague, of the town of Cranston, in the county of Providence and said State of Rhode Island, a citizen of said State of Rhode Island; against Fanny Sprague, of the city and county of Providence, in said State of Rhode Island, a citizen of said State of Rhode Island; against Mary Sprague, of said city and county of Providence, in said State of Rhode Island, a citizen of said State of Rhode Island, and against Zechariah Chafee, of said city and county of Providence, in said State of Rhode Island, a citizen of said State of Rhode Island.

And thereupon your orator complains and says—

That your orator was, in the year 1873, a creditor of Edwin Hoyt,

Albert S. Gallup, William Brenton Greene, Nehemiah Knight,
2 and the two defendants, said William Sprague and said Amasa Sprague, doing business in the city, county, and State of New York, as copartners, under the name and style of Hoyt, Spragues & Co.

(And your orator says that while the said firm of Hoyt, Spragues & Co. were so indebted to your orator, which indebtedness the said William and Amasa Sprague as copartners of said firm were individually liable to pay, the defendants, said William Sprague and said Amasa Sprague, the said A. & W. Sprague M'f'g Co., the said Mary Sprague, and the said Fanny Sprague, made, executed, and delivered to the defendant, Zechariah Chafee, a certain indenture bearing date Nov. 1, 1873, whereof a copy is annexed to this bill of complaint and made a part hereof, marked "Complainant's Exhibit A," and the said Chafee accepted said instrument and joined in the execution thereof.)

Amended by striking out the above paragraph and substituting the following:

And your orator says that while said firm of Hoyt, Spragues & Co. were so indebted to your orator, which said indebtedness the said William and Amasa Sprague as copartners of said firm were individually liable to pay, the said defendant, Zechariah Chafee, claims to have received a certain indenture bearing date Nov. 1, 1873, whereof a copy is annexed to this bill of complaint and made a part thereof, marked "Complainant's Exhibit A," which indenture said Chafee claims and pretends to have been made and executed by said William Sprague, Amasa Sprague, the A. & W. Sprague M'f'g Co., Fanny Sprague, and Mary Sprague, and which said indenture the said Chafee claims to have accepted and to have joined the execution thereof.

And your orator is informed and believes and expects to show this court that the said indenture was not made or executed by the said William Sprague, Amasa Sprague, the A. & W. Sprague M'f'g Co., Fanny Sprague, and Mary Sprague, as pretended and claimed.

And your orator further says that said William and Amasa Sprague, while as said copartners of the said firm of Hoyt, Spragues & Co. and so indebted to your orator, were each the owners of 1,082 shares of the capital stock of said Quidnick Co., one of the defendants, and upon the failure of the said firm of Hoyt, Spragues & Co. and the said copartners of said firm to pay the claim of your orator your orator sued out of this honorable court a writ to enforce the payment of his said claim against the said William Sprague, Amasa Sprague, William Brenton Greene, Nehe-
3 miah Knight, and Allen S. Gallup, as surviving partners of the firm of Hoyt, Spragues & Co., which writ was duly served upon said William Sprague, said Amasa Sprague, and said William Brenton Greene; and your orator further says that said writ was duly entered in this honorable court at the November term, in 1875, and that while said action was pending in this honorable court and before final judgment therein your orator sued out of this court a writ of mesne process of attachment against the said William and

said Amasa Sprague, by virtue of which the United States marshal for the district of Rhode Island, the officer charged with the service thereof, duly attached, among other property, all the right, title, and interest of the said William Sprague and the said Amasa Sprague in and to any shares of the capital stock of the said Quidnick Co., and after due service of said writ, said writ was forthwith duly returned to this honorable court, and thereafterwards such proceedings were had in this honorable court, at the November, 1882, term thereof, that this court rendered judgment in favor of your orator against said William Sprague and said Amasa Sprague for the sum of 34,500 dollars, debt or damages and costs, taxed at 151 dollars and 61 cents, a copy of which judgment is hereunto annexed and made part of this bill, marked "Complainant's Exhibit B," which judgment is in full force and effect and unsatisfied; and thereupon execution in due form of law issued from this court, and was, by the said United States marshal for the district of Rhode Island, duly levied, according to the law in that behalf made and provided, upon the right, title, and interest of the said William Sprague and the said Amasa Sprague in and to any shares in the capital stock of the said Quidnick Co. as attached upon said writ of mesne process, and a service of a copy of said execution was duly made upon the said William Sprague as president of the said Quidnick Co., according to the statute in that behalf made and provided and according to the charter of the said Quidnick Co., on, to wit, the 18th day of August, A. D. 1882, and thereafterwards all the right, title, and interest of said William Sprague and said Amasa Sprague were duly, in accordance with the law in that behalf made and provided, advertised for sale at public auction by the said United States marshal for ten days, and thereafterwards were sold at public auction by the said United States marshal, under and by virtue of said attachment, execution, and levy, on the, to wit, *the* 23d day of March, A. D. 1883, in accordance with said execution and advertise-
4 ment, and were purchased by your orator, he being the highest bidder therefor at said public auction sale on said execution; and thereafterwards the said United States marshal, after receiving from your orator the purchase-money therefor, made, executed, acknowledged, and delivered to your orator deeds of all said rights, titles, and interest of said William Sprague and the said Amasa Sprague in and to any shares of said capital stock of said Quidnick Co., copies of which deeds are hereunto annexed and made part of this bill, marked, respectively, "Complainant's Exhibits C and D."

And your orator further says that heretofore, to wit, in the year 1873, one Horatio N. Waterman, now of the town of East Greenwich, in the said State of Rhode Island, was the creditor of the A. & W. Sprague M'f'g Co., one of the defendants to this bill, in a large sum of money for work and labor done and services rendered by him to the said A. & W. Sprague M'f'g Co. at its request.

And your orator further says that said Mary Sprague and said Fanny Sprague were stockholders in said A. & W. Sprague M'f'g Co. in and prior to the year 1873, during the time the said work,

labor, and services were rendered by said Waterman for the said company, and as such stockholders were liable for the debts of said corporation, including the said debt to said Waterman, the certificate called for by chapter 142, section 11, of the General Statutes of Rhode Island in force when said debt was contracted not having been filed as required by said statutes.

That the said A. & W. Sprague M'f'g Co., in the year 1873 and while so indebted to the said Waterman, was the owner of 455 shares of the capital stock of the said Quidnick Company.

And that the said Mary and Fanny Sprague, while so liable for the debts of the said A. & W. Sprague M'f'g Co., were owners of certain shares of the capital stock of the said Quidnick Co., to wit, said Mary Sprague of 601 shares and said Fanny Sprague of 802 shares.

And your orator further states that the said Waterman, from time to time and at various and frequent intervals during the year 1873 and between the year 1873 and the year 1882, applied to the said A. & W. Sprague M'f'g Co. for the payment of its said indebtedness to him, and on each such application the said company, by its officers and authorized agents, admitted and acknowledged its said indebtedness and promised to pay the same to him, and to provide at an early date for the full settlement of his claim against it, and acknowledged the justice and the validity of said claim, but failed to pay the same; and that the said Waterman, trusting in and relying upon the said promises, neglected to prosecute his said claim at law until, wearied by his failure to obtain payment from the said A. & W. Sprague M'f'g Co., he, on the 21st day of April, A. D. 1882, sued out from the supreme court of said State of Rhode Island a writ against the said A. & W. Sprague M'f'g Co., to enforce payment of his said claim against it, and the said Waterman duly entered his suit in the said court at its October term for the county of Providence, A. D. 1882, and thereupon such proceedings were had that the said court at said term rendered judgment in favor of said Waterman and against the said A. & W. Sprague M'f'g Co., for the sum of twelve thousand two hundred and nine dollars and fifty-seven cents, debt or damages, and for the sum of twenty-six dollars and forty cents ($26.40), costs of such, a copy of which judgment is hereunto annexed and made a part of this bill, marked "Complainant's Exhibit E," which judgment is in full force and unsatisfied; and thereafter upon said judgment execution in due form of law and in accordance with the statutes of the State of Rhode Island issued from said court in favor of said Waterman and against the said A. & W. Sprague M'f'g Co., and was by one William S. Kent, a deputy sheriff of the said county of Providence, levied upon the said 455 shares of the capital stock of the said Quidnick Company belonging to the said A. & W. Sprague M'f'g Co. and upon the said 601 shares of the said Mary Sprague and upon the said 802 shares of the said Fanny Sprague, and service of a copy of said execution was duly made, in accordance with the statute in that behalf made and provided and in accordance with the charter of the said Quidnick Company, upon William Sprague, president of the said Quidnick Company, by said Kent, deputy sheriff, on, to wit, the 22d

day of March, A. D. 1883, and thereafterwards all the estate, right, title, interest, and property of the said A. & W. Sprague M'f'g Co. and of said Mary Sprague and of the said Fanny Sprague in and to all the said shares were, in accordance with the law in that behalf made and provided, advertised for sale at public auction for ten days, and thereafter were sold at public auction by the said Kent, deputy sheriff, under and by virtue of said execution and levy, on the third day of April, 1883, in accordance with said execution, levy, and advertisement, and were purchased by your orator, he
6 being the highest bidder therefor at said public auction sale; and thereupon the said Kent, deputy sheriff, after receiving from your orator the purchase-money therefor, made, executed, acknowledged, and delivered to your orator deeds of all the estate, right, title, interest, and property of the said A. & W. Sprague M'f'g Co. in the aforesaid 455 shares of said Quidnick Co., and of all the estate, right, title, interest, and property of the said Mary and Fanny Sprague in the aforesaid 1,403 shares of the capital stock of said Quidnick Company, copies of which deeds are hereunto annexed and made part of this bill of complaint, marked, respectively, "Complainant's Exhibit F" and "Complainant's Exhibit G."

And thereupon your orator left the said deeds hereinbefore referred to and set out as "Complainant's Exhibits C, D, F, and G" with the said Quidnick Co. and requested the said Quidnick Co. to cause the same to be recorded by its recording officer as is provided by the statute in that behalf, and your orator demanded of said Quidnick Company a transfer on the books of said company of the shares of said capital stock conveyed in and by said deeds and demanded of said Quidnick Company the certificates of stock therefor [but the said Quidnick Company refused to so transfer said stock or to give your orator certificates therefor].

Amended by striking out the above words in brackets.

And your orator further says that he is informed that the defendant, Zechariah Chafee, claims that on his request in writing the defendants, the A. & W. Sprague M'f'g Co., William Sprague, Amasa Sprague, Fanny Sprague, and Mary Sprague, did each in accordance with the said indenture hereinbefore referred to, a copy of which is hereto annexed and marked "Complainant's Exhibit A," transfer to the said Chafee said shares of said capital stock of the Quidnick Co. by way of pledge and collateral security to secure the performance of said indenture, and your orator is informed that the defendants, the said A. & W. Sprague M'f'g Co., the said William Sprague, the said Amasa Sprague, the said Fanny Sprague, and the said Mary Sprague deny that the said Chafee ever requested in writing the said parties to transfer said stock in way of pledge or security or in any other way, and that said A. & W. Sprague M'f'g Co., said William Sprague, said Amasa Sprague, said Fanny Sprague, and said Mary Sprague deny that said stock was ever transferred in way of pledge or security or in any other way to him, the said Chafee.

7 Amended by adding:

And your orator is informed and believes that on the stock transfer books of the said Quidnick Company there are what pur-

port to be transfers of stock from William Sprague, Amasa Sprague, Mary Sprague, A. & W. Sprague M'f'g Co., and Fanny Sprague, respectively, pretending to transfer to said Chafee all their stock substantially in the following form:

"For value received, — hereby sell and transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1, ——, — shares of the capital stock of the Quidnick Company."

[And your orator says he does not know whether said shares of said capital stock were conveyed to said Chafee, as claimed by him, or not.]

Amended by substituting the following in place of the above paragraph in brackets:

And your orator says he does not know whether said transfers are the respective transfers of said A. & W. Sprague M'f'g Co., William Sprague, Amasa Sprague, Fanny Sprague, and Mary Sprague, as claimed by the said Chafee, or not.

And your orator further states that neither he, your orator, nor the said Waterman in any way ever assented to, agreed to, ratified, or affirmed the said indenture (amended by adding) if it shall have been proved to have been made as claimed by said Chafee, the said indenture hereinbefore described, bearing date November 1, 1873, and set out as "Complainant's Exhibit A," or any transfers, conveyances, or proceedings thereunder, nor did they or either of them receive any benefit therefrom nor any payments made by virtue thereof, nor did they or either of them ever accept any deeds or conveyances or transfers or notes or evidences of debts, original or by way of renewal or security, made or executed or attempted to be made or executed thereunder.

And your orator further states that neither he nor the said Waterman in any way ever assented to, agreed to, ratified, or affirmed the said instrument or transfer, if made as is claimed by the said Chafee, or any proceedings thereunder, nor ever received any benefit therefrom nor any payment made by virtue thereof or in accordance therewith, but your orator insists that both the said indenture, (amended by adding) if made and executed as claimed by said Chafee, and the said transfer of said stock, if made as claimed by said Chafee, were and are as against your orator and the said Waterman null and void, both by the general law and by the provisions of General Statutes of Rhode Island, chap. 162, section 1, and of Public Statutes, chap. 173, section 1.

8

And your orator further says that he is informed and believes and therefore avers that subsequently to the making and executing of the said instrument herein referred to as "Complainant's Exhibit A," (amended by adding) as so pretended and claimed by the said defendants, the said A. & W. Sprague M'f'g Co., the said William Sprague, the said Amasa Sprague, and the said Mary Sprague, made a transfer upon the transfer books of said Quidnick Company of their respective shares of said capital stock of the said Quidnick Company to said Fanny Sprague, in trust for the equal benefit of their respective creditors, and that the said Fanny Sprague made a

transfer upon the books of said Quidnick Company of her shares of said capital stock of said Quidnick Company to said Mary Sprague, in trust for the equal benefit of all her creditors.

And your orator further says that the transfer of said respective shares of said capital stock of the said Quidnick Co. by the said A. & W. Sprague M'f'g Co., William Sprague, Amasa Sprague, and Mary Sprague to said Fanny Sprague, in trust as aforesaid, and by the said Fanny Sprague of her shares to said Mary Sprague as aforesaid, was only a pretended transfer, and that said transfers were not made for the equal benefit of creditors, but to prevent attachments of said shares by their respective creditors and for the purpose of and with the intent to delay, hinder, and defraud creditors of their just and lawful actions, debts, suits, accounts, damages, and just demands, and for the purpose of keeping said shares of said stock in control of said Spragues and where they could not be reached by the creditors by ordinary legal process; (amended by adding) and your orator says that no title passed or, as your orator submits, could pass to the said Fanny and the said Mary Sprague as against your orator by reason of said pretended transfers; and your orator further says that he caused his execution aforesaid to be levied on all the right, title, and interest of the said William and Amasa Sprague in and to any shares of the capital stock of the said Quidnick
9 Company and thereunder caused the same, by the said United States marshal for the district of Rhode Island, to be sold, as he lawfully might and should have done; and your orator states that he purchased all the right, title, and interest of the said William Sprague and the said Amasa Sprague to any shares of said capital stocks of said Quidnick Co. at the said execution sale at public auction in good faith, as he lawfully might do.

And your orator further states that the said Waterman caused his execution aforesaid to be levied on the said 802 shares of the said capital stock of said Quidnick Company, and the said 601 shares of the said capital stock of said Quidnick Company, and the said 455 shares of the said capital stock of said Quidnick Company, belonging, respectively, to the said Fanny and Mary Sprague and to the said A. & W. Sprague Manufacturing Company, and thereunder caused the same, by the said Kent, deputy sheriff, to be sold, as he lawfully might and should have done; and your orator further says that he purchased all the estate, right, title, and interest and property of the said Fanny Sprague in the said 802 shares of the capital stock of said Quidnick Company, of the said Mary Sprague in the said 601 shares of the capital stock of said Quidnick Company, and of the said A. & W. Sprague Manufacturing Company in the said 455 shares of the capital stock of the said Quidnick Company at the said execution sale, at public auction, in good faith, as he lawfully might do.

And your orator claims and submits that on receiving from the United States marshal the deeds hereinbefore referred to and set out as "Complainant's Exhibits C and D" that he became the owner of 1,082 shares of said capital stock of said Quidnick Company, being all the right, title, and interest of the said Amasa

Sprague in and to any shares in the capital stock of the said Quidnick Company and the owner of 1,082 shares, being all the right, title, and interest of the said William Sprague in and to any shares of the capital stock of the said Quidnick Company.

That, on receiving from the deputy sheriff, Kent, the deeds hereinbefore referred to as "Complainant's Exhibits F and G," your orator became the owner of 1,858 shares of the capital stock of said Quidnick Company.

And that your orator became entitled to all said shares referred to above, and to have the same transferred to him on the books of the said Quidnick Company, and to have a certificate thereof and therefor issued to him [all of which the said Quidnick Company refused and does still refuse to do]. (Amended by omitting the above words in brackets and substituting the following:) But that down to the filing of the original bill in this cause said Quidnick Company and its officers refused to make to him such transfer or to issue such certificates.

To the end, therefore, that the said defendants (except the said Z. Chafee, as to whom the oath is hereby waived) may upon their several and respective corporal oaths (the said A. & W. Sprague M'f'g Co. and the said Quidnick Co. by the oath of some one of their officers, respectively, for this purpose authorized and duly empowered) true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also to the best of their several and respective information, hearsay, and belief;

And that the said indenture hereinbefore described and set forth as "Complainant's Exhibit A" may, as against the said Waterman and your orator, be decreed to be null and void, and that the said assignment and transfer hereinbefore described, if made as claimed by the said Chafee, may as against the said Waterman and your orator be decreed to be null and void, and that the said transfer to said Fannie Sprague in trust, and the said transfer to the said Mary Sprague in trust as hereinbefore described, as to the said Waterman and your orator be decreed to be null and void;

And that your orator may be decreed to be entitled to and the owner of 4,022 shares of the capital stock of the said Quidnick Co., and that the said Chafee may be ordered and compelled, if the transfers as claimed by him prove to have been made, to transfer said shares of said capital stock of said Quidnick Co. to your orator [and that the said Quidnick Co. may be ordered and compelled to record said deeds as hereinbefore described and set out as "Complainant's Exhibits C, D, F, G," and to give your orator certificates for said shares] (amended by omitting the above words in brackets), and that the said Chafee, the said A. & W. Sprague M'f'g Co., the said Quidnick Co., the said William Sprague, the said Amasa Sprague, the said Fanny Sprague, and the said Mary Sprague may be forever enjoined from asserting any claim or right to the

11 said shares of said capital stock of said Quidnick Co., and that your orator may have such and further relief as this court may think proper to give;

And to the end that, pending hearing and consideration of this your orator's bill of complaint and until other and different orders made by this court, the said Chafee may be restrained and enjoined from alienating, selling, transferring, or voting upon or in any manner interfering with the said shares of the said capital stock of the said Quidnick Co. and from collecting or receiving any dividends thereon, and that the said Fanny Sprague, the said Mary Sprague, the said William Sprague, the said Amasa Sprague, and the said A. & W. Sprague M'f'g Co. may be restrained from making any transfer or disposition of any right or property they or either of them may claim in and to said shares of said capital stock of said Quidnick Co., as trustees and otherwise, and from voting upon the same or in any manner interfering therewith, and that the said Quidnick Co. may be restrained and enjoined from recording any assignment or transfer of said shares of said capital stock of said Quidnick Co. to any person other than your orator, and from paying any dividends or profits thereon otherwise than to your orator or into the registry of this court, to be held subject to the order of this court;

Forasmuch as your orator has no adequate remedy at law or save through the equity and jurisdiction of this court—

May it please this court to grant your orator the most gracious writ of subpœna of the United States, directed to the said Quidnick Co., the said A. & W. Sprague M'f'g Co., the said William Sprague, the said Amasa Sprague, the said Fanny Sprague, the said Mary Sprague, and the said Zechariah Chafee, directing them and each of them, on a day therein to be fixed and under penalty therein to be named, to appear before this court to answer your orator's bill of complaint, as hereinbefore prayed, and to abide such orders in the premises as this court may make.

And your orator will ever pray.

EVAN RANDOLPH.

MOWRY & COMSTOCK,
Solicitors for Complainants.
J. COOKE LONGSTRETH, *Of Counsel.*

12 *Oath to the Amended Bill of Complaint.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

In New York, this 1st day of August, A. D. 1883, personally appeared before me the above-named Evan Randolph and made oath that the facts and statements of the foregoing bill of complaint by him subscribed, so far as they are stated of his own knowledge, are true, and so far as they are stated on information and belief are true, to the best of his information and belief.

JOHN A. SHIELDS,
[L. S.] *United States Commissioner,*
Southern District of New York.

Oath to the Amended Bill of Complaint.

STATE OF PENNSYLVANIA, *County of Philadelphia:*

In Philadelphia, this 30th day of August, A. D. 1883, personally appeared before me the above-named Evan Randolph and made affirmation that the facts and statements in the foregoing amended bill of complaint by him subscribed, so far as they are stated of his own knowledge, are true, and so far as they are stated on information and belief are true, to the best of his information and belief.

SAMUEL BELL,
[L. S.] *United States Commissioner.*

13 COMPLAINANT'S EXHIBIT A.

This indenture, made and entered into this first day of November, A. D. eighteen hundred and seventy-three, by and between the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island and transacting business in the city of Providence; William Sprague, of South Kingston; Amasa Sprague, of Cranston; Mary Sprague, widow of William Sprague, deceased; Fanny Sprague, widow of Amasa Sprague, deceased, of said Providence, all in said State, and the said Amasa Sprague and William Sprague, as copartners doing business under the firm of A. & W. Sprague, as parties of the first part, and Zechariah Chafee, of said Providence, as party of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Company and the said A. & W. Sprague and said Amasa Sprague and William Sprague, individually, are now indebted or under liability, primary or secondary, in divers sums of money to divers persons, amounting in the aggregate to about the sum of fourteen millions of dollars, and which indebtedness and liabilities said parties of the first part are desirous of funding, and securing by the conveyance of their estates and properties to said party of the second part as mortgagee in trust, as hereinafter provided, and which conveyance to him, as mortgagee in trust, said party of the second part has agreed to, and by signing these presents does accept; and

Whereas for this purpose and to this end said A. & W. Sprague Manufacturing Company have executed their sixteen thousand five hundred negotiable promissory notes, all bearing even date with these presents and made payable to the order of said A. & W. Sprague and by them indorsed, payable three years from January 1, 1874, with interest, from January 1, 1874, payable semi-annually, at the rate of seven and three-tenths per centum per annum till said principal sum is paid, whether at or after maturity, and all installments of interest in arrear to bear interest at the rate aforesaid till paid, but reserving the right to pay said notes before maturity in installments of not less than five per centum of the principal
14 thereof at any time the semi-annual interest becomes pay-

able, principal and interest payable at the place of business of said A. & W. Sprague Manufacturing Company, in said Providence, said notes being of the amounts and lettered and numbered as follows, to wit: Two thousand thereof for fifty dollars each, lettered A No. 1 to A. No. 2000, both inclusive; three thousand thereof for one hundred dollars each, lettered B No. 1 to B No. 3000, both inclusive; three thousand thereof for two hundred dollars each, lettered C No. 1 to C No. 3,000, both inclusive; three thousand thereof for five hundred dollars each, lettered D No. 1 to D No. 3000, both inclusive; four thousand thereof for one thousand dollars each, lettered E No. 1 to E No. 4000, both inclusive, and fifteen hundred thereof for five thousand dollars each, lettered F No. 1 to F No. 1500, both inclusive, and all of which notes have been placed in the hands of said party of the second part, to be by him used and applied to the payment or retiring of such of the present outstanding indebtedness and liabilities aforesaid as the holders thereof shall, within nine months from the date of these presents, bring in and surrender and discharge or agree to extend for the term and according to the provisions of said notes; said notes, as so issued by said trustee, to be countersigned by him; and

Whereas the preservation of the manufacturing properties of said A. & W. Sprague Manufacturing Company and the best interests of the creditors require, to prevent great loss and shrinkage, that the business of the mills and print-works shall in the meantime be continued:

Now, therefore, said parties of the first part, in consideration of the premises and of the trusts hereinafter declared, and in further consideration of one dollar to them paid by said party of the second part, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said party of the second part, his heirs, executors, administrators, and assigns, all the property, real, personal, and mixed, not exempt from attachment by law, which the parties of the first part or any or either of them have and hold in the following city and towns in the State of Rhode Island, viz., the city of Providence, the towns of Cranston, Johnston, Coventry, East Greenwich, West Greenwich, South Kingston, Warwick, Pawtucket, Lincoln, North Providence, Cumberland, East Providence, and North Kingston; in the following towns of the Commonwealth of Massachusetts, viz., Attleborough and Palmer; in the following counties of the State of Maine, viz., Somerset, Piscataquis, Franklin, Kennebec, Penobscot, and Aroostook; in the following counties of the State of New Hampshire, viz., Grafton, Coos, Carroll, and Belknap; in the towns of Richmond and Lexington, in the State of South Carolina; in the city of Washington, in the District of Columbia; in the following towns of the State of Connecticut, viz., Sterling, Sprague, Scotland, and Windham, including, in what is known as the Baltic Mill property, in said State of Connecticut, 4 iron water wheels, 4 rotary pumps, 3 openers, 20 lappers, 412 cards, 19 double heads, 6 doublers, 5 grinders, 19 railway heads and troughs, 30 drawing frames, 25 coarse speeders, 49 fine speeders, 275 spinning frames, 34 spoolers, 16 slasher warpers,

4 slashers, 20 warpers, 12 dressers, 36 pairs mules, 1,973 looms, 1 boring machine, 1 upright drill, 2 iron planers, 8 turning engines, 1 circular saw, 1 vertical saw, 1 wood planer, 1 gear cutter, 2 bolt cutters, 1 run of grist-mill stones, 1 bolter for grist mill, 1 corn cracker, 1 steam fire engine, 3 gas retorts, and all the taps, dies, and tools appertaining to the machine and blacksmith's shops; and including, in what is known as the Oneco property, in said State of Connecticut, 250 stone hammers, 750 drills, and the tools and apparatus used in quarrying and cutting stone; and including, in what is known as the South Windham property, the saws and tools in the saw mill; and including the hay in barns or elsewhere in either of said towns of the State of Connecticut; and including generally within the foregoing description the two homestead estates, the Washington and Cove street lot, the Dyer-street lot, the Dorrance-street lot, the Pine and Page street lot, the Peace-street lot, the Marine railway property, the lot on the corner of Hope and Waterman streets, the Fenner-avenue lot, the Martin-street property, the George, Pitman, and Ives street property, the Elmwood store property, and the Ninth-ward property, in the city of Providence; the Cranston print-works property, with about eighteen hundred and seventy acres of land and improvements thereon, in the town of Cranston; the Natick Mills property, with about eight hundred and thirty acres of land and improvements thereon, and the Ladd farm, with about one hundred and one acres of land and improvements thereon, sometimes called the Coweset estate, in the town of Warwick; the Morgan
16 Mill property, with about six hundred and twenty-five acres of land and improvements thereon, in the town of Johnston; the homestead estate in South Kingstown, with about four hundred and twenty-eight acres of land and improvements thereon; the mill property in Augusta, Maine, with about four hundred acres of land and improvements thereon; the mill property in Palmer, Massachusetts, with about seven acres of land and improvements thereon; the estates in the city of Washington, with about six acres of land and improvements thereon; the property in the city of Columbia, in the State of South Carolina, with about four hundred acres of land and improvements thereon; and also all other the estate and property, real and personal, of every name and nature, not exempt from attachment by law, wherever situate and by whatsoever muniments of title evidenced, which any or either of the parties of the first part have or may be entitled to in possession or action, reversion or remainder, together also with all goods, stock, and supplies, manufactured, unmanufactured, and in process of manufacture, and all fixtures, machinery, tools, and other personal property of every kind which said A. & W. Sprague Manufacturing Company may at any time or from time to time hereafter have, either in lieu of or in addition to those now on hand, but excepting from this conveyance all shares of capital stock in any and every corporation, wherever located, belonging to any or either of the parties of the first part, the same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security, to secure the performance of the conditions of this instrument:

To have and to hold said granted and bargained premises, with all the rights, privileges, and appurtenances thereof, unto and to the use of him, the said party of the second part, his heirs, executors, administrators, and assigns, in trust for the intents and purposes and with, under, and subject to the powers and provisos hereafter contained, but subject, nevertheless, to the following condition—that is to say, upon condition that if said parties of the first part or any or either of them, their heirs, executors, administrators, or assigns, or any person for them or in their behalf, shall well and truly pay or cause to be paid all and singular the debts and liabilities aforesaid which shall be brought in under these presents and remain outstanding, as hereinbefore provided, and all expenses and
17 liabilities of every kind incurred in the execution of the trusts hereinafter created or declared, and all the notes aforesaid that shall be issued by the trustee aforesaid, together with the interest thereon, according to the tenor thereof, then this deed shall be and become void; otherwise shall remain in force;

And subject to the condition aforesaid, in trust for said party of the second part and other the trustees or trustee under these presents for the time being, to stand seized and possessed of the said granted estates and premises, and until default shall be made in the performance of the conditions aforesaid or any part thereof, or breach shall be made of the covenants or agreements hereinafter contained on the part of said parties of the first part to be kept or performed, or until sale under the trusts hereinafter declared, or until entry under the power in that behalf hereafter contained, to permit and suffer said parties of the first part to retain the possession and use of said granted premises:

Provided, and it shall be lawful for said trustees or trustee for the time being at any time or from time to time before such default or breach, and with or without previous entry, in their or his discretion, to sell, at public or private sale, any part or parts of said granted estates and property, and to execute and deliver such deed or deeds as may be necessary or proper to vest in the purchaser or purchasers thereof an absolute and indefeasible estate in fee simple therein, and to stand seized of all the purchase-moneys to arise and received therefrom for the uses and purposes hereinafter declared respecting the same:

And provided further, That said trustees or trustee for the time being may at any time or from time to time before default or breach, as well as after, enter upon said granted estates and property or any part or parts thereof, and take and assume the full and absolute possession and control of the same, and in their or his discretion to continue to run and operate or to close the mills or printworks of said manufacturing company or any or either of them, as said trustees or trustee for the time being shall deem for the best interests of the creditors:

And provided also, and it is hereby further declared, That in case default shall be made in payment of said notes hereby secured or any or either of them, or of the semi-annual interest due
18 thereon, or breach shall be made of either of the covenants

or agreements herein contained on the part of said parties of the first part to be kept and performed, and such default or breach shall continue for the space of sixty days, then in such case the said trustees or trustee hereunder for the time being, in their or his discretion, may, and upon the request in writing of the holders of one-fifth in amount of the notes then issued and outstanding under these presents said trustees or trustee for the time shall, from time to time thereafter, either before or after entry as aforesaid, sell, either together or in parcels, the estates and property aforesaid, or any part or parts thereof, at public or private sale, as said trustees or trustee shall think best, first giving, in case of any auction sale under this or under any other provisions of this instrument, notice thereof by advertisement at least twice a week for four successive weeks in some public newspaper printed in said Providence, and such other notice as they or he may deem advisable, and upon sale thereof to execute and deliver such deed or deeds as may be necessary or proper to vest in the purchaser or purchasers thereof an absolute and indefeasible estate in fee simple therein.

And it is hereby declared that said trustees or trustee for the time being shall stand seized of all the purchase-moneys to arise and received from sales or otherwise under any of the trusts of these presents, to apply and appropriate the same—

First, to the payment of all expenses incident to such sale or sales and of all insurance moneys, taxes, and other charges, if any, paid or incurred by them in respect of said trust estates, together with a reasonable compensation to said trustees or trustee for the time being for their or his own services and reasonable counsel fees, and all other charges and liabilities paid or incurred by them, either in carrying on the business or in the execution of any other of the trusts hereby created.

And, secondly, the residue of all moneys received by them under any of the trusts of this instrument from time to time, to apply and appropriate ratably to the payment of the principal and interest of all the debts and liabilities aforesaid of said parties of the first part which shall be brought in under these presents and remain outstanding as aforesaid, and of all the notes that shall be issued by said trustee and be outstanding under and secured
19 by these presents, and although by their terms the same may not then have matured, accounting to said parties of the first part, respectively, their heirs, executors, administrators, or assigns, for any surplus, if any, that may remain after the full payment thereof.

And it is further declared that no purchaser under any or either of the foregoing trusts shall be under any obligation to inquire into the necessity or regularity of any sale thereunder, nor to see to the application of any of the purchase-moneys thereof, but that the receipt of the trustees or trustee for the time being to such purchasers or purchaser for such purchase-moneys shall be his or their full and effectual acquittance and discharge therefor; and if at any time said trustee, or any trustee to be appointed under these presents, shall be desirous of resigning and of being discharged

from the trusts aforesaid, it shall be lawful for them or him so to do, and in such case or in case said trustee or any trustee to be appointed under these presents shall die or become incapable of acting in said trusts, it shall be lawful for the surviving or continuing trustees or trustee for the time being, by any writing or writings under their or his hands, to nominate, and appoint, or in case at any time all the trustees for the time being shall resign together, then for the supreme court of the State of Rhode Island sitting in equity to appoint, any other person or persons to be a trustee or trustees in the stead or place of him or them so dying, resigning, or becoming incapable of acting as aforesaid; and thereupon and as often as any such appointment shall be made all the trust estates and property then held under the trusts aforesaid shall, with all convenient speed, be so conveyed, assigned, and transferred as to vest the same in the surviving or continuing trustees or trustee and such new trustees or trustee, or if there be no continuing trustee, then in such new trustees or trustee only, their or his heirs, executors, administrators, and assigns, to the same uses and upon the same trusts as are herein declared concerning the same; and every new trustee under these presents so appointed, or otherwise duly appointed by any court of competent jurisdiction, may immediately exercise any power or discretion herein granted in the same manner as though originally named as trustee herein, and although the trust estate be not then vested in him; and no trustee under these presents shall be answerable or accountable for any loss which may happen to said trust estate or property, unless the same shall happen by his own neglect or default.

And the said parties of the first, for themselves and for their respective heirs, executors, administrators, and assigns, do hereby covenant with the said party of the second part, his heirs, executors, administrators, and assigns, at any time or from time to time during the continuance of this security, to execute and deliver to the party of the second part, or other the trustees or trustee under these presents for the time being, or to any purchaser under any of the foregoing trusts, such further conveyances or assurances of the estates or property hereby conveyed or intended to be conveyed, or any part or parts thereof, as said trustees or trustee for the time being may reasonably require, and at all times during the continuance of this security, at their own cost and charges, to keep and maintain insurance for the benefit of said party of the second part under these presents upon the mills, buildings, machinery, and other insurable property hereby conveyed or intended to be conveyed, in such reasonable amounts and in such insurance companies as said trustees or trustee for the time being shall approve; also that the profits that shall hereafter accrue in the business of said manufacturing company shall, from time to time, be by said company paid over to said trustees or trustee for the time being, to be held and applied to any of the purposes aforesaid in the same manner as the other trust moneys under these presents; also to pay all taxes and assessments, rates and charges, of every nature that may be laid or levied upon or in respect of said granted premises, and in default

thereof it shall be lawful for said trustees or trustee for the time being to effect such insurance and to pay said taxes, assessments, rates, and charges and all sums paid therefor shall be a further lien upon said granted premises secured by these presents.

In testimony whereof said A. & W. Sprague Manufacturing Company have caused these presents to be signed and its corporate seal to be hereunto affixed by said Amasa Sprague, its treasurer, for this purpose fully authorized, and said other parties of the first and second parts have hereunto set their hands and seals this
21 said first day of November, A. D. eighteen hundred and seventy-three.

(Signed) A. & W. SPRAGUE M'F'G CO.,
By AMASA SPRAGUE, *Treas.* [SEAL.]
WILLIAM SPRAGUE. "
AMASA SPRAGUE. "
MARY SPRAGUE. "
FANNY SPRAGUE. "
A. & W. SPRAGUE. "
ZECHARIAH CHAFEE. "

Signed, sealed, and delivered in presence of—
THOMAS A. DOYLE.
F. W. LATHAM.
GEORGE HARRIS.

THE STATE OF RHODE ISLAND, ETC., } *ss:*
City and County of Providence, }

Be it known that in said city of Providence, on this first day of December, A. D. 1873, before me, Henry Martin, a justice of the peace for the said city of Providence, a notary public for said State of Rhode Island, and a commissioner for the State of New York, residing in said city of Providence, personally appeared Amasa Sprague, Fanny Sprague, and Mary Sprague, who are personally known to me to be the same persons described in and who signed, sealed, and executed the foregoing instrument, and they then and there severally acknowledged to me that they signed, sealed, executed, and delivered the said instrument as, and that the same is, their free and voluntary act and deed for the uses and purposes therein mentioned and expressed; and at the same time and place the said Amasa Sprague, also personally known to me to be the same person who executed the foregoing instrument as treasurer, in his capacity as treasurer of the A. & W. Sprague Manufacturing Company, also acknowledged to me that he signed, sealed, executed, and delivered the said instrument as, and that the same is, his free and voluntary act and deed as such treasurer, and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company, for the uses and purposes therein mentioned and expressed.

22 In testimony whereof I have hereunto set my hand and official seals, at said city of Providence on this said first day of December, A. D. 1873.

(Signed) HENRY MARTIN,
Justice of the Peace, Notary Public, and Commissioner for the State of New York.

STATE OF RHODE ISLAND, } *ss:*
City and County of Providence, }

Be it known that in the city of Providence, on this sixth day of December, A. D. 1873, before me, Henry Martin, a justice of the peace for said city of Providence, a notary public for said State of Rhode Island, and a commissioner for the State of New York, residing in said Providence, personally appeared William Sprague, to me personally known, and he then and there acknowledged to me that he signed, sealed, and executed and delivered the foregoing instrument as his free and voluntary act and deed.

In testimony whereof I have hereunto set my hand and seals, at said city of Providence, on this eighth day of December, A. D. 1873.

[L. S.] HENRY MARTIN,
Justice of the Peace, Notary Public, and Commissioner for the State of New York.

23 COMPLAINANT'S EXHIBIT B.

UNITED STATES OF AMERICA, }
District of Rhode Island. }

Circuit Court of the United States. November Term, 1882, to wit, March 7th, 1883.

EVAN RANDOLPH }
vs. } No. 885. Law.
WILLIAM SPRAGUE *et al.* }

Judgment.

It is considered by the court here that the plaintiff have and recover of the defendants the sum of thirty-four thousand five hundred dollars, debt, and costs of suit, taxed at one hundred and fifty-one $\frac{61}{100}$ dollars, and have execution therefor.

DISTRICT OF RHODE ISLAND, *ss:*

CLERK'S OFFICE CIRCUIT COURT U. S.,
AT PROVIDENCE, *July* 25, 1883.

I, Henry Pitman, clerk of said court, for said district, do hereby certify that the above contains a true copy of the judgment entered in the above-entitled cause.

In testimony whereof I have hereunto set the seal of said court and my hand on the day and year above written.

[L. S.] HENRY PITMAN, *Clerk.*

24 COMPLAINANT'S EXHIBIT C.

To all people to whom these presents shall come, Greeting:

Whereas an execution against William Sprague, of South Kingstown, in the county of Washington, in the State of Rhode Island,

and Amasa Sprague, of Cranston, in the county of Providence, in said State of Rhode Island, at the suit of Evan Randolph, issued from the circuit court of the United States holden at Providence, within and for the district of Rhode Island, on the 15th day of November, A. D. 1882, returnable at its June term, 1883, was by me, James H. Coggeshall, United States marshal for said district of Rhode Island, on the seventh day of March, 1883, at 11 o'clock and 30 minutes in the forenoon, levied on all the right, title, and interest which the said Amasa Sprague had on the seventeenth day of August, 1882, at 11 o'clock and 30 minutes in the forenoon, the time of the attachment on writ of mesne process, in and to any shares of stock in the Quidnick Company, a manufacturing corporation created by the General Assembly of the State of Rhode Island; and

Whereas, on the 23d day of March, 1883, at 11 o'clock in the forenoon, at the United States marshal's office, custom-house building, Providence, R. I., pursuant to the notice of sale by me inserted in the Providence Daily Journal, as required by law, all the right, title, and interest of the said Amasa Sprague in and to any shares of stock in the Quidnick Company aforesaid were by me, the said James H. Coggeshall, United States marshal as aforesaid, sold at public auction, for the satisfaction of said execution, to Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, who was the highest bidder therefor, for the sum of fifty dollars, which the said Evan Randolph hath since well and truly paid to me:

Now, know ye that, by force and virtue of the law in such case made and provided, I, the said James H. Coggeshall, United States marshal as aforesaid, in consideration of the sum of money paid unto *to* me as aforesaid, do by these presents bargain, sell, assign, and set over unto the said Evan Randolph all the right, title, and interest which the said Amasa Sprague had in and to any shares of stock in the said Quidnick Company at the time of the attachment thereof on writ of mesne process; to have and to hold the same unto him, the said Evan Randolph, his executors, administrators, and assigns forever.

In witness whereof I have hereunto set my hand and seal this twenty-third day of March, A. D. 1883.

JAMES H. COGGESHALL, [L. S.]
U. S. Marshal, R. I. District.

Signed, sealed, and delivered in presence of—
HENRY MARSH, JR.

STATE OF RHODE ISLAND, &c., } ss:
County of Providence, }

In Providence, this twenty-seventh day of March, A. D. 1883, the above-named James H. Coggeshall, U. S. marshal for the district of Rhode Island, personally appeared before me and acknowledged the

foregoing instrument, by him signed in his said capacity, to be his free and voluntary act and deed in his said capacity.

HENRY MARSH, JR.,
Notary Public.

COMPLAINANT'S EXHIBIT D.

To all people to whom these presents shall come, Greeting:

Whereas an execution against William Sprague, of South Kingstown, in the county of Washington, in the State of Rhode Island, and Amasa Sprague, of Cranston, in the county of Providence,
26 in said State of Rhode Island, at the suit of Evan Randolph, issued from the circuit court of the United States holden at Providence, within and for the district of Rhode Island, on the 15th day of November, A. D. 1882, returnable at its June term, 1883, was by me, James H. Coggeshall, United States marshal for said district of Rhode Island, on the seventh day of March, 1883, at 11 o'clock and 30 minutes in the forenoon, levied on all the right, title, and interest which the said William Sprague had on the seventeenth day of August, 1882, at eleven o'clock and thirty minutes in the forenoon, the time of the attachment on writ of mesne process, in and to any shares of stock in the Quidnick Company, a manufacturing corporation created by the General Assembly of the State of Rhode Island; and

Whereas, on the 23d day of March, 1883, at 11 o'clock in the forenoon, at the United States marshal's office, custom-house building, Providence, R. I., pursuant to the notice of sale by me inserted in the Providence Daily Journal, as required by law, all the right, title, and interest of the said William Sprague in and to any shares of stock in the Quidnick Company aforesaid were by me, the said James H. Coggeshall, United States marshal as aforesaid, sold at public auction, for the satisfaction of said execution to Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, who was the highest bidder therefor, for the sum of fifty dollars, which the said Evan Randolph hath since well and truly paid to me:

Now, know ye that, by force and virtue of the law in such case made and provided, I, the said James H. Coggeshall, United States marshal as aforesaid, in consideration of the sum of money paid unto me as aforesaid, do by these presents bargain, sell, assign, and set over unto the said Evan Randolph all the right, title, and interest which the said William Sprague had in and to any shares of stock in the said Quidnick Company at the time of the attachment thereof on writ of mesne process; to have and to hold the same unto him, the said Evan Randolph, his executors, administrators, and assigns forever.

In witness whereof I have hereunto set my hand and seal this twenty-third day of March, A. D. 1883.

JAMES H. COGGESHALL, [L. S.]
U. S. Marshal, R. I. District.

Signed, sealed, and delivered in presence of—
HENRY MARSH, JR.

27 STATE OF RHODE ISLAND, &c., } ss:
County of Providence, }

In Providence, this twenty-seventh day of March, A. D. 1883, the above-named James H. Coggeshall, United States marshal for the district of Rhode Island, personally appeared before me and acknowledged the foregoing instrument, by him signed in his said capacity, to be his free and voluntary act and deed in his said capacity.

HENRY MARSH, JR.,
Notary Public.

COMPLAINANT'S EXHIBIT E.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } sc:
Providence, }

[L. S.] At the supreme court of said State, begun and holden, at Providence, within and for the county of Providence, on the first Monday of October, in the year of our Lord one thousand eight hundred and eighty-two.

Be it remembered that at the present term of this court Horatio N. Waterman, of East Greenwich, in our county of Kent, complained of the A. & W. Sprague Manufacturing Company, a corporation having its principal office at Providence, whose property was attached and it summoned by the sheriff in an action of the case to recover damages of the defendant corporation for its neglect and refusal to pay to the plaintiff the sum of $20,000, balance due to said plaintiff by book account on, to wit, — day of April, A. D. 1882.

28 The plaintiff also filed the usual money counts and a count for interest. Said case was duly entered at said term, the defendant pleading the general issue by its attorney, Andrew B. Patton, and other pleas being filed by C. Frank Parkhurst, James Tillinghast, Charles Hart, and B. F. Thurston, who claimed to be attorneys for said defendant corporation, and being called for hearing, upon the plaintiff's motion to strike out said last-mentioned pleas, the same was granted and they were accordingly stricken out, and thereafterwards the defendant corporation submitted to judgment for the plaintiff for $12,209.57 and costs.

Whereupon it is considered by the court that the plaintiff recover and have of the defendant corporation the sum of $12,209.57, debt or damages, and costs of suit taxed at $26.40.

A true copy of record.

Attest: CHARLES BLAKE, *Clerk.*

COMPLAINANT'S EXHIBIT F.

To all people to whom these presents shall come:

Whereas an execution against the A. & W. Sprague Manufacturing Company, a corporation located and now or late doing business in

this and other States, at the suit of Horatio N. Waterman, of East Greenwich, in the county of Kent, was by me, William S. Kent, deputy sheriff, on the 22d day of March, 1883, at 2 o'clock and 5 minutes in the afternoon, levied on four hundred and fifty-five shares of the capital stock of the Quidnick Company, a corporation located and doing business in the towns of Warwick and Coventry, in the said State of Rhode Island, belonging to the A. & W. Sprague Manufacturing Company, a stockholder of the said Quidnick Company; and

Whereas, on the third day of April, 1883, all the right, title, and interest of the said A. & W. Sprague Manufacturing Company in and to the said four hundred and fifty shares of the capital
29 stock of the Quidnick Company were by me, the said William S. Kent, deputy sheriff, sold at public auction, for the satisfaction of the said execution, to Evan Randolph, of Philadelphia, who was the highest bidder, for the sum of one hundred dollars, which the said Evan Randolph hath since well and truly paid to me, the said William S. Kent, deputy sheriff:

Now, know ye that, by force and virtue of the law in such case made and provided, I, the said William S. Kent, deputy sheriff, in consideration of the sum of one hundred dollars paid unto me as aforesaid, do by these presents bargain, sell, assign and set over unto the said Evan Randolph, his heirs and assigns forever, all the estate and property and all the right, title, and interest of the said A. & W. Sprague Manufacturing Company of, in, and to the said four hundred and fifty-five shares of the said capital stock of the said Quidnick Company at the time of the levy thereon as above set forth:

To have and to hold the said four hundred and fifty-five shares of said capital stock to the said Evan Randolph, his heirs and assigns forever.

In witness whereof I have hereunto set my hand and seal this — day of April, A. D. 1883.

Executed in presence of—

WILLIAM S. KENT,
Deputy Sheriff. [L. S.]

STATE OF RHODE ISLAND, } *sc:*
Providence, }

In the city of Providence, this seventh (7th) day of April, A. D. 1883, personally appeared the above-named William S. Kent, deputy sheriff, and acknowledged the above instrument, by him signed as deputy sheriff, to be his free and voluntary act and deed in said capacity.

Before me—

WILLIAM B. BEACH,
Justice of the Peace.

30 COMPLAINANT'S EXHIBIT G.

To all people to whom these presents shall come:

Whereas an execution against the A. & W. Sprague Manufactur-

ing Company, a corporation located and doing business in this and other States, at the suit of Horatio N. Waterman, of East Greenwich, county of Kent, was by me, William S. Kent, deputy sheriff, on the twenty-second day of March, 1883, at 2 o'clock and 30 minutes in the afternoon, levied on eight hundred and two shares of the capital stock of the Quidnick Company belonging to Fanny Sprague, of Providence, and also on six hundred and one shares of the capital stock of the Quidnick Company belonging to Mary Sprague, of said Providence, it being represented that said Fanny Sprague and Mary Sprague were stockholders in the said Quidnick Company, and also in the said A. &. W. Sprague Manufacturing Company, now and at the time of contracting the indebtedness on which the judgment in this suit was found and on which this execution was issued, and that thereupon the said Fanny Sprague and Mary Sprague were jointly and severally liable for all the indebtedness of the said company and jointly and severally liable for this debt and to satisfy this execution, the said A. & W. Sprague Manufacturing Company not having filed the certificate required by chapter 142, section 11, of the General Statutes of Rhode Island, the said Fanny Sprague and Mary Sprague not having exempted themselves from such liability; and

Whereas, on the third of April, 1883, all the right, title, and interest of the said A. & W. Sprague Manufacturing Company and of Fanny Sprague and Mary Sprague in and to the said fourteen hundred and three shares of the capital stock of the Quidnick Company were by me, the said William S. Kent, deputy sheriff, sold at public auction, for the satisfaction of the said execution, to Evan Randolph, of Philadelphia, who was the highest bidder, for the sum of seventy-five dollars, which the said Evan Randolph hath since well and truly paid to me, the said William S. Kent, deputy sheriff:

Now, know ye that, by force and virtue of the law in such case made and provided, I, the said William S. Kent, deputy sheriff, in consideration of the sum of seventy-five dollars paid unto me as aforesaid, do by these presents bargain, sell, assign, and set over unto the said Evan Randolph, his heirs and assigns forever, all the
31 estate and property and all the right, title, and interest of the said A. & W. Sprague Manufacturing Company and of the said Fanny Sprague and Mary Sprague of, in, and to the said fourteen hundred and three shares of the said capital stock of the said Quidnick Company at the time of the levy thereon as above set forth:

To have and to hold the said fourteen hundred and three shares of said capital stock to the said Evan Randolph, his heirs and assigns forever.

In witness whereof I have hereunto set my hand and seal this — day of April, A. D. 1883.

WILLIAM S. KENT,
Deputy Sheriff. [L. S.]

STATE OF RHODE ISLAND, } *sc:*
Providence, }

In the city of Providence, this seventh (7th) day of April, A. D. 1883, personally appeared the above-named William S. Kent, deputy

sheriff, and acknowledged the above instrument, by him signed as deputy sheriff, to be his free and voluntary act and deed in said capacity.

Before me—

WILLIAM B. BEACH,
Justice of the Peace.

32 & 33 *Supplemental Bill of Complaint.* (*Filed August* 31, 1883.)

And now comes your orator in the above-entitled cause, said Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, a citizen of said State of Pennsylvania, and, by way of supplement and of addition to his original bill and the amendment thereof filed, herewith complains against Gorham P. Pomroy, of the city and county of Providence, in the State of Rhode Island, a citizen of said State of Rhode Island; against the Quidnick Company, a corporation duly created by the General Assembly of the State of Rhode Island and located and doing business in said State of Rhode Island, a citizen of said State of Rhode Island; against the A. & W. Sprague M'f'g Co., a corporation duly created by the General Assembly of said State of Rhode Island and located and doing business in said State of Rhode Island, a citizen of said State of Rhode Island; against William Sprague, of the town of South Kingston, in the county of Washington and said State of Rhode Island, a citizen of said State of Rhode Island; against Amasa Sprague, of the town of Cranston, in the county of Providence and said State of Rhode Island, a citizen of said State of Rhode Island; against Fanny Sprague, of the city and county of Providence, in said State of Rhode Island, a citizen of said State of Rhode Island; against Mary Sprague, of said city and county of Providence, in said State of Rhode Island, a citizen of said State of Rhode Island, and against Zechariah Chafee, of said city and county of Providence, in said State of Rhode Island, a citizen of said State of Rhode Island.

And thereupon your orator complains and says—

That he filed in this honorable court his original bill of complaint against the said Quidnick Company, the said A. & W. Sprague Manufacturing Company, the said William Sprague, the said Amasa Sprague, the said Fanny Sprague, the said Mary Sprague, and the said Zechariah Chafee on the 2d day of August, A. D. 1883; that subpœnas were duly issued and served on each of said defendants, but that none of said defendants have, to the time of filing of this your orator's supplemental bill, appeared and made answer to your orator's said original bill; that in said original bill your
34 orator prayed that an injunction might issue restraining and enjoining the said Quidnick Company, the said Zechariah Chafee, the said A. & W. Sprague Manufacturing Company, the said William Sprague, the said Amasa Sprague, the said Mary Sprague, and the said Fanny Sprague from selling, transferring, voting upon, or in any manner interfering with any of the stock or the capital of said Quidnick Company mentioned in said original bill, and from

collecting or receiving any dividends thereon, and restraining the said Fanny Sprague and the said Mary Sprague from making any transfer or disposition of any right or property they or either of them may claim in and to said stock of said Quidnick Company as trustees, and from voting upon the same or in any manner interfering therewith, and restraining the said Quidnick Company from recording any assignment or transfer of said stock to any person other than your orator, and from paying any dividends or profits thereon otherwise than to your orator or into the registry of this court, to be held subject to the order of this court pending the hearing and consideration of your orator's said bill of complaint or until other and different order of this court.

And your orator further says that with said original bill he filed a petition for a special injunction, containing the same prayer as in said original bill mentioned, and supported said petition by affidavits; that process in said petition was duly issued and served on each of said defendants, and that on the return day of said process said petition was continued for hearing to the 15th day of September, 1883.

And your orator further avers that since the filing of your orator's said original bill of complaint said Quidnick Company, recognizing the title of your orator to 4,022 shares of the capital stock of said Quidnick Company, as averred by your orator in his said original bill of complaint, and that your orator was entitled to receive a certificate therefor, has received the deeds mentioned, described, and set out in your orator's said original bill as "Complainant's Exhibits C, D, F, and G," and by its proper recording officer has duly recorded the same, and has under the seal of said Quidnick Company duly issued to your orator a certificate for 4,022 shares of said capital stock of said Quidnick Company.

35 And your orator avers that he is now the holder and owner of said certificate for 4,022 shares of the capital stock of said Quidnick Company, which is duly entered of record in the proper books of said Quidnick Company.

And your orator further says that since the filing of your orator's said original bill of complaint certain parties claiming to be creditors of said A. & W. Sprague Manufacturing Company, said Amasa Sprague, said William Sprague, said Fanny Sprague, and said Mary Sprague have by certain proceedings commenced in the supreme court of the State of Rhode Island since the filing of your orator's said original bill of complaint, pretending that said Fanny Sprague and said Mary Sprague held said 4,022 shares of the capital stock of said Quidnick Company as assignees for the benefit of the several creditors of said A. & W. Sprague Manufacturing Company, said William Sprague, said Amasa Sprague, said Fanny Sprague, and said Mary Sprague, under the pretended transfers set out and described in your orator's said original bill and in your orator's said amended bill, obtained a decree of said court purporting to remove said Fanny Sprague and said Mary Sprague from their pretended trust under said pretended assignments, and to appoint said Gorham P. Pomroy in their place and stead.

And your orator further avers that said Gorham P. Pomroy now claims, by virtue of said decree, to be the assignee of said A. & W. Sprague Manufacturing Company, said Fanny Sprague, said Mary Sprague, said William Sprague, said Amasa Sprague, of said 4,022 shares of said capital stock for the equal benefit of all their creditors.

And your orator further avers that he was in no way a party to the proceedings hereinbefore mentioned by virtue of which said Gorham P. Pomroy claims to be the assignee as aforesaid, and was never apprised of the pendency thereof; that said proceedings were solely in the interest of creditors assenting to said pretended transfers, and did not and could not raise the question of the validity of said pretended transfers or assignments as to your orator or other dissenting creditors; that prior to the commencement of the proceedings under which said Pomroy claims to act as such assignee the complainant had filed his original bill in this cause, to which said Mary Sprague and said Fanny Sprague were both made parties defendants, and in which they were duly served with process of this court for the purpose of determining his rights to said 4,022
36 shares of said capital stock as to said pretended assignments, and that thereupon he became entitled to the jurisdiction of this court therefor.

And your orator avers that said supreme court was without jurisdiction in said proceedings hereinbefore mentioned, by reason and virtue of which said Pomroy claims to be assignee aforesaid, and your orator shows unto your honors that because of the exigencies of his cause and the irreparable damage and injury to him that would ensue if he delayed to ask relief of this court he has had no time to procure certified copies of said proceedings, but prays this court that he may be allowed to procure said certified copies, which your orator will do as soon as possible, and when procured to make he same a part of this his supplemental bill.

And your orator further avers that said Pomroy, claiming to be assignee as aforesaid, and claiming to be as said assignee a stockholder in said Quidnick Company, claiming to hold 4,022 shares of said stock, a majority of the number of the shares of the capital stock of said Quidnick Company, threatens and intends and has already taken steps to hold a meeting of so-called stockholders of said Quidnick Company, and at said meeting claiming, as assignee aforesaid, to hold the majority of the shares of said Quidnick Company and disregarding your orator's just claim of ownership of said 4,022 shares of said stock to vote, and by his vote to remove the president and other officers of said Quidnick Company and to elect other persons to their place, persons to your orator unknown; and the said Pomroy threatens and intends to issue to himself, as said assignee, new stock.

And by means of said officers so elected to take possession of certain mills used for manufacturing purposes and belonging to said Quidnick Company and situate in the town of Warwick, in said State of Rhode Island, and to take possession of other valuable property belonging to said Quidnick Company, and to use and appropriate the same and receive and take dividends which may be

realized on said 4,022 shares of said capital stock of said Quidnick Company.

And your orator further avers that said Pomroy intends, through the officers so elected by him, to run said mills of said Quidnick Company, situate in said Warwick, for the benefit of himself as assignee.

And your orator further avers that if said Pomroy should consummate his intended action the value of the said 4,022
37 shares of said capital stock of said Quidnick Company, held and owned by your orator as aforesaid, will be rendered uncertain and will be thereby greatly deteriorated, and any sale thereof by your said orator will be hindered and rendered impracticable for any sum at all commensurate with the true value of the same.

And your orator further avers that the action so contemplated and threatened by said Pomroy, if allowed to be taken, will work such damage and injury to your orator as to be utterly remediless at law, and your orator is entirely without any adequate remedy, and can only have relief in this court of equity.

All of which actings, doings, and pretences are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator.

To the end, therefore, that the said Gorham P. Pomroy, claiming to be assignee aforesaid, may be made a party defendant to said suit of your orator and may full, true, direct, and perfect answer make to all and singular the matter in said original bill as amended and in this your orator's supplemental bill and hereinbefore stated as if specially interrogated thereto (but without oath, your orator hereby waiving the oath to said answer), and to the end that the said other defendants (except the said Z. Chafee, as to whom the oath is hereby waived) may upon their several and respective corporal oaths (the said A. & W. Sprague M'f'g Co. and the said Quidnick Co. by the oath of some one of their officers, respectively, for this purpose authorized and duly empowered) true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also to the best of their several and respective information, hearsay, and belief;

And that the said proceedings so had in said supreme court of Rhode Island, as hereinbefore mentioned, as to your orator may be deemed to be null and void;

And that pending the hearing and consideration of your orator's said bill as amended and this your orator's supplemental bill, and until further and different orders made by this court, that a special injunction may be issued from this court enjoining and restraining the said Gorham P. Pomroy, claiming to be assignee afore-
38 said, from holding the said contemplated meeting, from voting upon, and from removing the president and other officers of said Quidnick Company, or in any manner interfering with the

said shares of the said capital stock of the said Quidnick Company, and from alienating, selling, and transferring the same, and from collecting or receiving any dividends thereon, or from making any disposition of any right or property he may claim in and to said shares of said capital stock of said Quidnick Company, as assignees aforesaid or otherwise.

And your orator further prays that he may by a decree of this court be decreed to be the owner of 4,022 shares of the capital stock of said Quidnick Company.

And your orator further prays as he has already prayed in and by his said original bill and in and by his original bill, as amended.

And that for the purpose of obtaining said injunction against said Pomroy, claiming as assignee aforesaid, said original bill and said original bill as amended, signed, and sworn to by your orator may be taken as the affidavits of your orator.

And that this supplemental bill subscribed and sworn to by your orator may be taken as in affidavits on the motion therein stated.

And that your honors will grant unto your orator what other and further relief your honors — said cause merits and to your honors seem meet.

And that your honors may grant unto your orator a writ of subpœna, to be directed to said Gorham P. Pomroy, the said Quidnick Company, the said A. & W. Sprague Manufacturing Company, the said William Sprague, the said Amasa Sprague, the said Mary Sprague, the said Fanny Sprague, and the said Zechariah Chafee, directing them and each of them forthwith to be and appear before your honors in this honorable court, and then and there to answer all and singular the matter aforesaid (and the said Gorham P. Pomroy to answer to all and singular the matters and things in said original bill and in said original — as amended), and to stand to, abide, and perform such orders and decrees therein as to your honors shall seem meet.

And your orator will ever pray.

EVAN RANDOLPH.

MOWRY & COMSTOCK,
Solicitors for Complainants.
J. COOKE LONGSTRETH, *Of Counsel.*

39 STATE OF PENNSYLVANIA, }
County of Philadelphia. }

In Philadelphia, this 30th day of August, 1883, personally appeared before me the above-named Evan Randolph and made affirmation that the facts and statements contained in the foregoing supplemental bill by him subscribed, so far as they are stated of his own knowledge, are true, and so far as they are stated on information and belief are true, to the best of his information and belief.

SAMUEL BELL,
U. S. Commissioner.

[SEAL.]

Plea of the Quidnick Company. (*Filed November* 3, 1883.)

The plea of the Quidnick Company to the above-entitled bill of complaint of Evan Randolph.

This respondent, by protestation, not confessing or acknowledging all or any of the matters and things in said bill set forth to be true, doth plead to said bill, and for a plea says—

That heretofore and before the complainant exhibited his said bill of complaint in this honorable court and before said complainant claims to have acquired any right, title, or interest in any shares of the capital stock of said Quidnick Company, to wit, on the 31st day of August, A. D. 1881, Zechariah Chafee, trustee and assignee, one of the defendants in the above-entitled bill, together with sundry other co-complainants, exhibited his bill of complaint in the supreme court of the State of Rhode Island against this said respondent and against the said respondents, the said A. & W. Sprague Manufacturing Company and the said Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague, and one Benjamin G. Chace.

That in said bill so exhibited in said supreme court the said Chafee claimed the making, execution, and delivery to him by said A. & W. Sprague Manufacturing Company and the said Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague of the trust mortgage, a copy of which, marked "A," is annexed to the said complainant's bill, and also claimed that, upon his written request, the said A. & W. Sprague Manufacturing Company
40 and the said Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague, on or about the 2d day of December, A. D. 1873, respectively transferred to him, the said Chafee, upon the stock transfer book of said Quidnick Company, all their shares of the capital stock of said Quidnick Company by way of pledge and collateral security to secure the performance of the conditions of said trust mortgage before mentioned, the said Amasa Sprague and William Sprague each transferring to said Chafee 1,082 shares, the said Fanny 802 shares, the said Mary 601 shares, and the said A. & W. Sprague Manufacturing Company 455 shares, making in all 4,022 shares of said capital stock of said Quidnick Company so transferred, and that thereafterward, to wit, on or about the 22d day of December, A. D. 1873, said Amasa Sprague, William Sprague, and Mary Sprague and said A. & W. Sprague Manufacturing Company, by transfers by them, respectively, duly made and executed on said stock transfer book of said Quidnick Company, transferred their remaining right, title, and interest and equity of redemption in said shares of said stock so held by them, respectively, to said Fanny Sprague, in trust for the equal benefit of their respective creditors, and that the said Fanny Sprague, at the same time, in like manner transferred to said Mary Sprague her remaining right, title, and interest and equity of redemption in her shares aforesaid, in trust for the equal benefit of all the creditors of her, the said Fanny Sprague.

That all the defendants named in said bill of complaint were duly served with process and entered their appearance in said suit

and have filed answers therein denying the making of said transfers of said stock in pledge and as collateral security and admitting the making of the assignments of said stock of December 22, A. D. 1873, as above stated, and that said bill is still pending in said supreme court, and the matters thereof are undetermined, and that said supreme court thereby had and still has jurisdiction of all parties aforesaid and of the entire subject-matter of said suit and of the title to the entire 4,022 shares of said stock.

That said defendants named in said bill pending in said supreme court included all parties who had at the time of entering the same in said court asserted any claim, right, title, or interest in said shares of said stock or any part thereof and all persons who had claimed or asserted any title therein.

41 That all the defendants named in said bill of the complainant, Evan Randolph, save Gorham P. Pomroy, of Providence, in the State of Rhode Island, who, by decree of said supreme court, had succeeded to the title of said Fanny Sprague and Mary Sprague as assignees of said 4,022 shares of said stock, are identically the same persons named as defendants in said suit in said supreme court, and the subject-matter of the complainant's bill pending in this honorable court is identically the same as the subject-matter of said suit pending in said supreme court, to wit, the title to and ownership of said 4,022 shares of the capital stock of said Quidnick Company.

That by reason of said pending bill of said Chafee in said supreme court and the proceedings therein said supreme court had acquired jurisdiction of the controversy and of the subject-matter thereof and of all the persons claiming title thereto before the exhibition of the complainant's said bill in this honorable court, and that said supreme court had and has the sole and exclusive right to decide and determine the same, and has exercised its jurisdiction therein by making decrees therein.

That the complainant in this suit pending in this honorable court neither had nor had asserted any claim or title to said 4,022 shares of said capital stock of said Quidnick Company or any part thereof at the time of the filing of said bill in said supreme court, and could not, therefore, have been made a party thereto, and that the claim to said 4,022 shares of said capital stock of said Quidnick Company now set up by said complainant, Evan Randolph, in his said bill in this honorable court should be set up in said bill pending in said supreme court, and the said bill filed by the said complainant, Evan Randolph, in this honorable court should be dismissed.

Wherefore this said respondent doth plead the said bill so pending in said supreme court and the proceedings therein in bar to the said complainant's present bill, and prays the judgment of this honorable court whether he should make other or further answer thereto, and prays that he may be hence dismissed and for his costs.

QUIDNICK COMPANY,
STEPHEN HARRIS, *President.*

RATHBONE GARDNER,
CHARLES H. PARKHURST,
Solicitors for Respondent, The Quidnick Company.

42 STATE OF RHODE ISLAND, } *sc.*:
Providence. }

I, Stephen Harris, president of the Quidnick Company, the above-named respondent, on oath depose and say that the above plea signed by said respondent is true in point of fact, and that it is not interposed for delay.

STEPHEN HARRIS,
President Quidnick Company.

Sworn to and subscribed before the undersigned, a notary public within and for the State of Rhode Island, this third day of November, A. D. 1883.

RATHBONE GARDNER,
Notary Public.

We, the undersigned, counsel for the said respondent, The Quidnick Company, hereby certify that the above plea signed by said respondent is, in our opinion, well founded in point of law.

RATHBONE GARDNER.
CHARLES H. PARKHURST.

Plea of Gorham P. Pomroy. (*Filed Nov.* 3, 1883.)

The plea of Gorham P. Pomroy, assignee of Amasa Sprague, Fanny Sprague, Mary Sprague, William Sprague, and the A. & W. Sprague Manufacturing Company, of 4,022 shares of the capital stock of the Quidnick Company, to the above-entitled bill of complaint of Evan Randolph.

This respondent, by protestation, not confessing or acknowledging all or any of the matters and things in said bill set forth to be true, doth plead to said bill, and for said plea says—

That heretofore and before the said complainant exhibited his said bill of complaint in this honorable court and before said complainant claims to have acquired any right, title, or interest in any shares of the capital stock of said Quidnick Company, to wit, on the 31st day of August, A. D. 1881, Zechariah Chafee, trustee and assignee, one of the defendants in the above-entitled bill, to-
43 gether with sundry other co-complainants, exhibited his bill of complaint in the supreme court of the State of Rhode Island against the said respondents, the said Quidnick Company, the said A. & W. Sprague Manufacturing Company, and the said Amasa Sprague, Fanny Sprague, Mary Sprague, and William Sprague, and one Benjamin G. Chace.

That in said bill so exhibited in said supreme court the said Chafee claimed the making, execution, and delivery to him by said A. & W. Sprague Manufacturing Company and the said Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague of the trust mortgage, a copy of which, marked "A," is annexed to the said complainant's bill, and also claimed that upon his written request the

said A. & W. Sprague Manufacturing Company and the said Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague, on or about the 2d day of December, A. D. 1873, respectively transferred to him, the said Chafee, upon the stock transfer book of the said Quidnick Company all their shares of the capital stock of said Quidnick Company by way of pledge and collateral security to secure the performance of the conditions of said trust mortgage before mentioned, the said Amasa Sprague and William Sprague each transferring to said Chafee 1,082 shares, the said Fanny 802 shares, the said Mary 601 shares, and the said A. & W. Sprague Manufacturing Company 455 shares, making in all 4,022 shares of said capital stock of said Quidnick Company so transferred; and that thereafterward, to wit, on or about the 22d day of December, 1873, said Amasa Sprague, William Sprague, and Mary Sprague, and said A. & W. Sprague Manufacturing Company, by transfers duly made and executed by them on said stock transfer book of said Quidnick Company, respectively transferred their remaining right, title, and interest and equity of redemption in said shares of said stock so held by them, respectively, to Fanny Sprague in trust for the equal benefit of their respective creditors, and that the said Fanny Sprague, at the same time, in like manner transferred to said Mary Sprague her remaining right, title, and interest and equity of redemption in her shares aforesaid in trust for the equal benefit of the creditors of her, the said Fanny Sprague.

That all the defendants named in said bill of complaint were duly served with process and entered their appearance in said suit, and have filed answers therein denying the making of
44 said transfers of said stock in pledge and as collateral security and admitting the making of the assignments of said stock of December 22, A. D. 1873, as above stated, and that said bill is still pending in said supreme court and the matters thereof are undetermined; that said supreme court thereby had and still has jurisdiction of all parties aforesaid and of the entire subject-matter of said suit and the title to the entire 4,022 shares of said stock.

That said defendants named in said bill in said supreme court now pending included all parties who had at the time of entering the same in said court asserted any claim, right, title, or interest in said shares of said stock or any part thereof and all persons who had claimed or asserted any interest or title therein.

That all the defendants named in said bill of the complainant, Evan Randoph, save this respondent, who, by decree of said supreme court, had succeeded to the title of said Fanny Sprague and Mary Sprague as assignees of said 4,022 shares of said stock, are identically the same persons named as defendants in said suit in said supreme court, and the subject-matter of the complainant's bill pending in this honorable court is identically the same as the subject-matter of said suit pending in said supreme court, to wit, the title to and ownership of said 4,022 shares of the capital stock of said Quidnick Company.

That by reason of said pending bill of said Chafee in said supreme court and the proceedings therein said supreme court had

acquired jurisdiction of the controversy and of the subject-matter thereof and of all the parties claiming title thereto before the exhibition of the complainant's said bill in this honorable court, and said supreme court had and has the sole and exclusive right to decide and determine the same, and has exercised its jurisdiction therein by making decrees therein.

That the complainant in this suit, pending in this honorable court, neither had nor had asserted any claim or title to said 4,022 shares of said capital stock of said Quidnick Company or any part thereof at the time of the filing of said bill in said supreme court, and could not therefore have been made a party thereto, and that the claim to said 4,022 shares of said capital stock of said Quidnick Company now set up by said complainant, Evan Randolph, in his said
45 bill in this honorable court should be set up in said suit pending in said supreme court, and the said bill filed by said complainant, Evan Randolph, in this honorable court should be dismissed.

Wherefore the said respondent doth plead the said bill so pending in said supreme court and the proceedings therein in bar to the said complainant's present bill, and prays the judgment of this honorable court whether he should make other or further answer thereto, and prays that he may be hence dismissed and for his costs.

GORHAM P. POMROY, *Assignee.*

RATHBONE GARDNER,
CHARLES H. PARKHURST,
Solicitors for Respondent, Gorham P. Pomroy, Assignee.

STATE OF RHODE ISLAND, &c., } *sc:*
Providence, }

I, Gorham P. Pomroy, assignee, the above-named respondent, on oath depose and say that the above plea by me signed is true in point of fact, and that it is not interposed for delay.

GORHAM P. POMROY, *Assignee.*

Sworn to and subscribed before the undersigned, a notary public within and for the State of Rhode Island, this third day of November, A. D. 1883.

RATHBONE GARDNER,
Notary Public.

We, the undersigned, counsel for the said respondent, Gorham P. Pomroy, assignee, hereby certify that the above plea by him signed is, in our opinion, well founded in point of law.

RATHBONE GARDNER.
CHARLES H. PARKHURST.

46 *Plea in Bar of Gorham P. Pomroy.* (*Filed January* 5, 1884.)

And the said defendant, Gorham P. Pomroy, by leave of court first had and obtained, doth further plead to said bill, and for a plea says—

That on the third day of September, in the year 1883, this defendant filed and entered in the supreme court of the State of Rhode Island his bill of complaint against the said complainant, Evan Randolph, and one J. Cooke Longstreth, and against the said Amasa Sprague, William Sprague, Fanny Sprague, Mary Sprague, and Zechariah Chafee, and the said Quidnick Company and A. & W. Sprague Manufacturing Company, and in said bill of complaint stated that he, the said Pomroy, by virtue of certain decrees made and entered in said supreme court in certain causes therein pending and in said bill recited and set forth, as assignee of Amasa Sprague of 1,082 shares of the capital stock of said Quidnick Company, of Mary Sprague of 601 shares of said capital stock, of Fanny Sprague of 802 shares of said capital stock, of William Sprague of 1,082 shares of said capital stock, and of said A. & W. Sprague Manufacturing Company of 455 shares of said capital stock, was entitled to the ownership of the entire number of all the shares aforesaid, being 4,022 shares of the capital stock of said Quidnick Company, and also stating that the said Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague, and the said A. & W. Sprague Manufacturing Company, fraudulently combining with the said Evan Randolph and the said J. Cooke Longstreth to defraud this defendant of his right to said shares of said stock and to throw a cloud upon his titie thereto, procured the said William Sprague, claiming to be president of said Quidnick Company, to issue to said complainant Randolph a certificate under the seal of said Quidnick Company of the whole of said 4,022 shares of said capital stock in the words and figures following:

No. 43.

Quidnick Company, Providence, R. I.

Capital, $500,000. Incorporated 1862. 5,000 shares, $100 each.

This is to certify that Evan Randolph, of Philadelphia, is the owner at the date hereof of four thousand twenty-two shares
47 of capital stock of the Quidnick Company, transferable only upon the books of said company, at their office, in Providence, R. I.

WILLIAM SPRAGUE, *President.*

W. SPRAGUE, *Secretary.*

Providence, R. I., Aug. 6, 1883.

and praying in said bill of complaint that said supreme court would decree that by force and virtue of the decree in said bill recited and set forth appointing this defendant assignee of said Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague and said A. & W. Sprague Manufacturing Company of said shares of said capital stock of said Quidnick Company this defendant was entitled to all said 4,022 shares of said capital stock, and was entitled to vote thereon at all meetings of said Quidnick Company; and

also praying that said supreme court would further decree that said certificate of said 4,022 shares of said stock issued to said Randolph by said William Sprague, claiming to be president of said Quidnick Company, was wrongfully and illegally issued by said William Sprague and was void and of no effect, and that the said Evan Randolph should deliver the same up to be cancelled; and also praying that the said Evan Randolph and J. Cook Longstreth and each of them, their agents, servants, employees, and officers, might be perpetually enjoined from acting or claiming to act as stockholders of said Quidnick Company, and from asserting any title to any of said shares of said capital stock, and from in any way interfering with or disturbing this defendant in his rights as owner and holder, as assignee as aforesaid, of said 4,022 shares of said stock, and from voting or attempting to vote upon any of said shares, and from attending upon or holding any meetings of said Quidnick Company, and from interfering in any way with any of the affairs or business of said company; and also praying that a subpœna might issue in said cause.

And this defendant avers that a subpœna was issued in said cause by order of said court and was personally served upon the said Evan Randolph upon the tenth day of September, A. D. 1883, and was returned to said court, and that the said Evan Randolph neglected to enter his appearance in said cause or to file any plea or answer therein, and that by the decree of said court entered November 5, 1883, said bill of complaint in said cause was taken as confessed as against the said Evan Randolph.

48 And this defendant further avers that thereafterwards, to wit, December 29, A. D. 1883, a further decree was entered in said cause by said court in the words and figures following:

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence*, } *sc:*

Supreme Court. October Term, A. D. 1883.

GORHAM P. POMROY, Assignee, *vs.* EVAN RANDOLPH *et als.* } Equity. 2161.

This cause came on to be heard before the court, and it appearing to the court that Evan Randolph and J. Cooke Longstreth, two of the respondents in said cause, have been personally served with the subpœna in said cause and have failed to enter their appearance in said cause or to file any answers therein, and that by the decree of said court in said cause November 5, A. D. 1883, the bill of complaint in said cause was taken as confessed as against said Evan Randolph and said J. Cooke Longstreth:

It is now, on this seventy-second day of said term, upon motion of the complainant, after the reading of the bill of complaint in said cause, duly sworn to by the complainant, ordered, adjudged, and decreed by the court as against said Evan Randolph and J. Cooke Longstreth as follows:

First.

That by force and virtue of the decrees in said bill recited and set forth appointing the said complainant assignee of William Sprague of 1,082 shares of the capital stock of the Quidnick Company, and assignee of Amasa Sprague of 1,082 shares of the capital stock of said Quidnick Company, and assignee of Mary Sprague of 601 shares of the capital stock of said Quidnick Company, and assignee of the A. & W. Sprague Manufacturing Company of 455 shares of the capital stock of said Quidnick Company, in place of Fanny Sprague, removed by said court from her trust as assignee of said Amasa Sprague, William Sprague, Mary Sprague, and said A. & W. Sprague Manufacturing Company of said shares of said capital stock of said Quidnick Company, and assignee of Fanny Sprague of 802 shares of the capital stock of said Quidnick Company, in place of Mary
49 Sprague, removed by said court from her trust as assignee of said Fanny Sprague of said shares of said stock, the said complainant is entitled to all the shares of said capital stock conveyed to said Fanny Sprague, assignee, by said Amasa Sprague, Mary Sprague, William Sprague, and said A. & W. Sprague Manufacturing Company by transfers made by them respectively upon the stock transfer book of said Quidnick Company on or about December 22, 1873, in said bill of complaint set forth, being 3,220 shares of the said capital stock of said Quidnick Company, subject to the lawful claims of the respondent, Zechariah Chafee, upon said shares, as set forth in said bill of complaint, if any such lawful claims there be, and is also entitled to all the shares of the said capital stock of said Quidnick Company, 802 in number, conveyed by said Fanny Sprague to said Mary Sprague by transfer made by said Fanny Sprague to said Mary Sprague upon the stock transfer book of said Quidnick Company on or about December 22, 1873, in said bill of complaint set forth, subject to the lawful claims of said Zechariah Chafee, on said shares as set forth in said bill of complaint, if any such lawful claims there be, and is entitled to vote upon all said 4,022 shares of said capital stock at all meetings of said Quidnick Company.

Second.

That the certificate of 4,022 shares of the capital stock of said Quidnick Company issued to said Evan Randolph by William Sprague, claiming to be president of said Quidnick Company, bearing date Aug. 6, 1883, numbered 43, in the complainant's bill set forth, was wrongfully and illegally issued by said William Sprague to said Evan, and is void and of no effect, and said Evan Randolph is hereby decreed to deliver up said certificate to the complainant, that the same may be canceled.

Third.

That the said respondents, Evan Randolph and J. Cooke Longstreth, and each of them, their agents, servants, employees, and

officers, and all persons claiming under them or either of them, are hereby perpetually enjoined from acting or claiming to act as stockholders of said Quidnick Company, and from asserting any title to any of the said shares of the capital stock of said Quidnick Company, and from in any way interfering with or disturbing the com-
50 plainant in his rights as holder and owner, as assignee as aforesaid, of said 4,022 shares of said capital stock of said Quidnick Company, and from voting or attempting to vote upon any of said shares of said stock, and from attending upon or holding any meetings of said Quidnick Company, and from interfering in any way with any of the affairs or business of said Quidnick Company.

Entered as the decree of the court this seventy-second day of the October term, 1883 (Dec. 29, 1883).

By order—

HERBERT ALMY,
Assistant Clerk.

Enter.

J. H. STINESS, *J. S. C.*
G. M. CARPENTER, *J.*

All which matters and things this defendant doth aver and plead in bar to said complainant's bill, and prays the judgment of this honorable court whether he should make any further answer thereto.

GORHAM P. POMROY, *Assignee.*

RATHBONE GARDNER,
CHARLES H. PARKHURST,
Solicitors for Defendant, Gorham P. Pomroy.

The undersigned, counsel for the said defendant, Gorham P. Pomroy, hereby certify that in their opinion the foregoing plea is well founded in point of law.

RATHBONE GARDNER.
CHARLES H. PARKHURST.

STATE OF RHODE ISLAND, ETC., } *sc.:*
Providence, }

I, Gorham P. Pomroy, defendant in the above-entitled cause, on oath depose and say that the above plea by me signed is not interposed for delay, and that the same is true in point of fact.

GORHAM P. POMROY.

Subscribed and sworn to in Providence, in said county, this fourth day of January, A. D. 1884.

Before me—

RATHBONE GARDNER,
Notary Public.

51 *Further Plea of Quidnick Company.* (*Filed January* 5, 1884.)

And the said defendant, The Quidnick Company, by leave of court first had and obtained, doth further plead to said bill, and for a plea says—

That on the third day of September, A. D. 1883, Gorham P. Pomroy, one of the defendants in this cause, exhibited in the supreme court of the State of Rhode Island his bill of complaint against the said complainant, Evan Randolph, and one J. Cooke Longstreth, and against the said Amasa Sprague, William Sprague, Fanny Sprague, Mary Sprague, Zechariah Chafee, and A. & W. Sprague Manufacturing Company, and against this defendant, said Quidnick Company, and in said bill of complaint stated that he, the said Pomroy, by virtue of certain decrees made and entered in said supreme court in certain causes therein pending and in said bill recited and set forth, as assignee of Amasa Sprague — 1,082 shares of the capital stock of said Quidnick Company, of William Sprague of 1,082 shares of said capital stock, of Mary Sprague of 601 shares of said capital stock, of Fanny Sprague of 802 shares of said capital stock, and of said A. & W. Sprague Manufacturing Company of 455 shares of said capital stock, was entitled to the ownership of the entire number of all the shares aforesaid, being 4,022 shares of the capital stock of said Quidnick Company, and also stating that the said Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague and the said A. & W. Sprague Manufacturing Company, fraudulently combining with the said Evan Randolph and the said J. Cooke Longstreth to defraud said Gorham P. Pomroy of his right to said shares of said stock and to throw a cloud upon his title thereto, procured the said William Sprague, claiming to be president of said Quidnick Company, to issue to said complainant Randolph a certificate, under the seal of said Quidnick Company, of the whole of said 4,022 shares of said capital stock, in the words and figures following:

52 No. 43.

Quidnick Company, Providence, R. I.

Capital, $500,000. Incorporated 1862. 5,000 shares, $100 each.

This is to certify that Evan Randolph, of Philadelphia, is the owner at the date hereof of four thousand twenty-two shares of capital stock of the Quidnick Company, transferable only upon the books of said company, at their office, in Providence, R. I.

WILLIAM SPRAGUE, *President.*

W. SPRAGUE, *Secretary.*

Providence, R. I., Aug. 6, 1883.

And praying in said bill of complaint that said supreme court would decree that, by force and virtue of the decrees in said bill recited and set forth appointing said Gorham P. Pomroy assignee

of said Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague and said A. & W. Sprague Manufacturing Company of said 4,022 shares of said capital stock of said Quidnick Company, he, said Gorham P. Pomroy, was entitled to all said 4,022 shares of said capital stock and was entitled to vote thereon at all meetings of said Quidnick Company, and also praying that said supreme court would further decree that said certificate of said 4,022 shares of said stock issued to said Randolph by said William Sprague, claiming to be president of said Quidnick Company, was wrongfully and illegally issued by said William Sprague and was void and of no effect, and that the said Evan Randolph should deliver the same up to be canceled, and also praying that the said Evan Randolph and J. Cook Longstreth and each of them, their agents, servants, employees, and officers, might be perpetually enjoined from acting or attempting to act as stockholders of said Quidnick Company, and from asserting any title to any of said shares of said capital stock, and from in any way interfering with or disturbing said Gorham P. Pomroy in his rights as owner and holder, as assignee as aforesaid, of said 4,022 shares of said stock, and from voting or attempting to vote upon any of said shares, and from attending upon or holding any meetings of said Quidnick Company, and from interfering in any way with any of the affairs or business of said Quidnick Company, and also praying that a subpœna might issue in said cause.

And this defendant avers that a subpœna was issued in said cause by order of said court and was personally served upon the said Evan Randolph upon the tenth day of September, A. D. 1883, and was returned to said court, and that the said Evan
53 Randolph neglected to enter his appearance in said cause or to file any plea or answer therein, and that by the decree of said court entered November 5, 1883, said bill of complaint in said cause was taken as confessed as against the said Evan Randolph.

And this defendant further avers that thereafterwards, to wit, December 29, A. D. 1883, a further decree was entered in said cause by said court in the words and figures following:

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

Supreme Court. October Term, A. D. 1883.

GORHAM P. POMROY, Assignee, *vs.* EVAN RANDOLPH *et als.* } Equity. 2161.

This cause came on to be heard before the court, and it appearing to the court that Evan Randolph and J. Cooke Longstreth, two of the respondents in said cause, have been personally served with the subpœna in said cause and have failed to enter their appearance in said cause or to file any answers therein, and that by the decree of said court in said cause November 5, A. D. 1883, the bill of com-

plaint in said cause was taken as confessed as against said Evan Randolph and said J. Cooke Longstreth:

It is now, on this seventy-second day of said term, upon motion of the complainant, after the reading of the bill of complaint in said cause, duly sworn to by the complainant—

Ordered, adjudged, and decreed by the court as against said Evan Randolph and J. Cooke Longstreth as follows:

First.

That by force and virtue of the decrees in said bill recited and set forth appointing the said complainant assignee of William Sprague of 1,082 shares of the capital stock of the Quidnick Company, and assignee of Amasa Sprague of 1,082 shares of the capital stock of said Quidnick Company, and assignee of Mary Sprague of 601 shares of the capital stock of said Quidnick Company, and assignee of the A. & W. Sprague Manufacturing Company of 455 shares of the capital stock of said Quidnick Company, in
54 place of Fanny Sprague, removed by said court from her trust as assignee of said Amasa Sprague, William Sprague, Mary Sprague, and said A. & W. Sprague Manufacturing Company of said shares of said capital stock of said Quidnick Company, and assignee of Fanny Sprague of 802 shares of the capital stock of said Quidnick Company, in place of Mary Sprague, removed by said court from her trust as assignee of said Fanny Sprague of said shares of said stock, the said complainant is entitled to all the shares of said capital stock conveyed to said Fanny Sprague, assignee, by said Amasa Sprague, Mary Sprague, William Sprague, and said A. & W. Sprague Manufacturing Company by transfers made by them respectively upon the stock transfer book of said Quidnick Company on or about December 22, 1873, in said bill of complaint set forth, being 3,220 shares of the said capital stock of said Quidnick Company, subject to the lawful claims of the respondent, Zechariah Chafee, upon said shares, as set forth in said bill of complaint, if any such lawful claims there be, and is also entitled to all the shares of the said capital stock of said Quidnick Company, 802 in number, conveyed by said Fanny Sprague to said Mary Sprague by transfer made by said Fanny Sprague to said Mary Sprague upon the stock transfer book of said Quidnick Company on or about December 22, 1873, in said bill of complaint set forth, subject to the lawful claims of said Zechariah Chafee on said shares, as set forth in said bill of complaint, if any such lawful claims there be, and is entitled to vote upon all said 4,022 shares of said capital stock at all meetings of said Quidnick Company.

Second.

That the certificate of 4,022 shares of the capital stock of said Quidnick Company issued to said Evan Randolph by William Sprague, claiming to be president of said Quidnick Company, bearing date Aug. 6, 1883, numbered 43, in the complainant's bill set forth, was wrongfully and illegally issued by said William Sprague

to said Evan — and is void and of no effect, and said Evan Randolph is hereby decreed to deliver up said certificate to the complainant that the same may be cancelled.

Third.

That the said respondents, Evan Randolph and J. Cooke Longstreth and each of them, their agents, servants, employees,
55 and officers, and all persons claiming under them or either of them, are hereby perpetually enjoined from acting or claiming to act as stockholders of said Quidnick Company, and from asserting any title to any of the said shares of the capital stock of said Quidnick Company, and from in any way interfering with or disturbing the complainant in his rights as holder and owner, as assignee as aforesaid, of said 4,022 shares of said capital stock of said Quidnick Company, and from voting or attempting to vote upon any of said shares of said stock, and from attending upon or holding any meetings of said Quidnick Company, and from interfering in any way with any of the affairs or business of said Quidnick Company.

Entered as the decree of the court this seventy-second day of the October term, 1883 (Dec. 29, 1883).

By order—

HERBERT ALMY,
Assistant Clerk.

Enter.

J. H. STINESS, *J. S. C.*
G. M. CARPENTER, *J.*

All which matters and things this defendant doth aver and plead in bar to said complainant's bill, and prays the judgment of this honorable court whether he should make any further answer thereto.

QUIDNICK COMPANY.
STEPHEN HARRIS, *President.*

RATHBONE GARDNER,
CHARLES H. PARKHURST,
Solicitors for Defendant.

The undersigned, counsel for the said defendant, The Quidnick Company, hereby certify that, in their opinion, the foregoing plea is well founded in point of law.

RATHBONE GARDNER.
CHARLES H. PARKHURST.

STATE OF RHODE ISLAND, etc., } *sc:*
Providence, }

I, Stephen Harris, president of the Quidnick Company, defendant in the above-entitled cause, on oath depose and say
56 that the above plea signed by said Quidnick Company is not interposed for delay, and that the same is true in point of fact.

STEPHEN HARRIS,
President Quidnick Company.

Subscribed and sworn to in Providence, in said county, this fifth day of January, A. D. 1884.

Before me—

RATHBONE GARDNER,
Notary Public.

Plea of Zechariah Chafee. (*Filed January* 15, 1884.)

The plea of Zechariah Chafee, trustee and assignee of the A. & W. Sprague Manufacturing Company and of Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague, one of the defendants to the above-entitled bill of complaint.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill set forth to be true, doth plead to said bill, and for plea says—

That heretofore and before the said complainant exhibited his said bill of complaint in this honorable court, and before said complainant claims to have acquired any right, title, or interest in any shares of the capital stock of said Quidnick Company, to wit, on the 31st day of August, A. D. 1881, this defendant, together with sundry other co-complainants, exhibited his bill of complaint, No. 1932, in the supreme court of the State of Rhode Island against the said respondents, the said Quidnick Company, the said A. & W. Sprague Manufacturing Company, and the said Amasa Sprague, Fanny Sprague, Mary Sprague, and William Sprague, and one Benjamin G. Chace.

That in said bill so exhibited in said supreme court this defendant claimed the making, execution, and delivery to him by said A. & W. Sprague Manufacturing Company and the said Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague of the
57 trust mortgage, a copy of which, marked "A," is annexed to the said complainant's bill, and also claimed that upon his request the said A. & W. Sprague Manufacturing Company and the said Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague, on or about the 22d day of December, A. D. 1873, respectively, transferred to him, the said Chafee, upon the stock transfer book of said Quidnick Company, by way of pledge and collateral security to secure the performance of the conditions of said trust mortgage before mentioned, the said Amasa Sprague and William Sprague each transferring to said Chafee 1,082 shares, the said Fanny 802 shares, the said Mary 601 shares, and the said A. & W. Sprague Manufacturing Company 455 shares, making in all 4,022 shares of said capital stock of said Quidnick Company so transferred; and that thereafterward, to wit, on or about the 22d day of December, A. D. 1873, said Amasa Sprague, William Sprague, and Mary Sprague and said A. & W. Sprague Manufacturing Company, by transfers duly made and executed by them on said stock transfer book of said Quidnick Company, respectively, transferred their remaining right, title, and interest and equity of redemption in said shares of said stock so held by them, respectively, to Fanny Sprague, in trust for the equal

benefit of their respective creditors, and that the said Fanny Sprague, at the same time in like manner, transferred to said Mary Sprague her remaining right, title, and interest and equity of redemption in her shares aforesaid, in trust for the equal benefit of the creditors of her, the said Fanny Sprague.

That all the defendants named in said bill of complaint, No. 1932, were duly served with process and entered their appearance in said suit and have filed answers therein denying the making of said transfers of said stock in pledge and as collateral security, and admitting the making of the assignments of said stock of December 22, A. D. 1873, as above stated, and that said bill is still depending in said supreme court and the matters thereof are undetermined.

That heretofore and before this said complainant exhibited his said bill of complaint in this honorable court and before said complainant claims to have acquired any right, title, or interest in any shares of the capital stock of said Quidnick Company, to wit, on the 26th day of December, A. D. 1882, this defendant exhibited
58 his bill of complaint, No. 2075, in the supreme court of the State of Rhode Island against the said respondents, the said A. & W. Sprague Manufacturing Company, Fanny Sprague, Mary Sprague, Amasa Sprague, and William Sprague.

That in said bill so exhibited in said supreme court this defendant claimed the making, execution, and delivery to him by said same parties of said same trust mortgage, Exhibit A, and also claimed that said parties made said transfers of said 4,022 shares of said stock of said Quidnick Company to him, said Chafee, by way of pledge and collateral security at the time and in the manner as above alleged, and also claimed that said parties made said transfers of all their remaining right, title, and interest and equity of redemption in said 4,022 shares of said stock of said Quidnick Company, at the time and in the manner as above alleged, to said Mary Sprague and said Fanny Sprague, as assignees for the benefit of creditors as aforesaid.

That all the defendants named in said bill of complaint, No. 2075, were duly served with process and entered their appearance in said suit and have filed answers therein denying the making of said transfers of said stock in pledge and as collateral security, and admitting the making of the assignments of said stock of December 22, A. D. 1873, as above stated, and that said bill is still depending in said supreme court and the matters thereof are undetermined.

That said supreme court thereby, by virtue of said two bills of complaint, Nos. 1932 and 2075, had and still has jurisdiction of all parties aforesaid and of the entire subject-matter of said suits and the title to the entire 4,022 shares of said stock.

That said defendants named in said bills in said supreme court now pending included all parties who had at the time of entering the same in said court asserted any claim, right, title, or interest in said shares of said stock or any part thereof and all persons who had claimed or asserted any interest or title therein.

That all the defendants named in said bill of the complainant, Evan Randolph, save said defendant Pomroy, who by proceedings in said supreme court under the statutes of said State of Rhode Isl-

and in such case made and provided, having jurisdiction of such proceedings and of all the parties thereto, and by decree of
59 said supreme court, had been substituted in the place of and to the title of said Fanny Sprague and Mary Sprague as assignees of said 4,022 shares of said stock, are identically the same persons named as defendants in said suits in said supreme court, and the subject-matter of the complainant's bill pending in this honorable court is identically the same as the subject-matter of said suits pending in said supreme court, to wit, the title to and ownership of said 4,022 shares of the capital stock of said Quidnick Company.

That by reason of said pending bills of this defendant Chafee in said supreme court and the proceedings therein said supreme court had acquired jurisdiction of the controversy and of the subject-matter thereof and of all the parties claiming title thereto before the exhibition of the complainant's said bill in this honorable court, and said supreme court had and has the sole and exclusive right to decide and determine the same, and has exercised its jurisdiction therein by making decrees therein.

That the complainant in this suit pending in this honorable court neither had nor had asserted any claim or title to said 4,022 shares of said capital stock of said Quidnick Company or any part thereof at the time of the filing of said bill in said supreme court, and could not therefore have been made a party thereto, and that the claim to said 4,022 shares of said capital stock of said Quidnick Company now set up by said complainant, Evan Randolph, in his said bill in this honorable court should be set up in said suits pending in said supreme court, and the said bill filed by said complainant, Evan Randolph, in this honorable court should be dismissed.

Wherefore this said defendant doth plead the said bill so pending in said supreme court and the proceedings therein in bar to the said complainant's present bill, and prays the judgment of this honorable court whether he should make other or further answer thereto, and prays that he may be hence dismissed and for his costs.

ZECHARIAH CHAFEE.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHARLES HART,
BENJ. F. THURSTON,
Solicitors for Z. Chafee.

60 UNITED STATES OF AMERICA, } *sc:*
District of Rhode Island, }

I, Zechariah Chafee, the above-named defendant, on oath depose and say that the above plea by me signed is true in point of fact, and is not interposed for delay.

ZECHARIAH CHAFEE.

Sworn to and subscribed before the undersigned, a notary public

within and for the State of Rhode Island, this tenth day of January, A. D. 1884.

C. FRANK PARKHURST,
Notary Public.

We, the undersigned, counsel for the said defendant, Zechariah Chafee, hereby certify that the above plea is, in our opinion, well founded in point of law.

C. FRANK PARKHURST.
JAMES TILLINGHAST.
CHARLES HART.

60*a* United States Circuit Court, District of Rhode Island.

EVAN RANDOLPH
vs.
QUIDNICK COMPANY *et als.* } In Equity. No. —.

Supplemental Bill of Complaint.

And now comes your orator in the above-entitled cause, said Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, a citizen of said State, and by way of supplement and of addition to his original bill and supplemental bill filed in said cause complains against Stephen Harris and Charles B. Gould, of the city and county of Providence, in the State of Rhode Island, citizens of said State of Rhode Island; against the Union Company, claiming to be a corporation duly created by the General Assembly of said State of Rhode Island, located and doing business in said State of Rhode Island and a citizen of said State of Rhode Island; against Benjamin B. Knight and Robert Knight, both of said city and county of Providence and State of Rhode Island and citizens of said State of Rhode Island, copartners as B. B. & R. Knight; against Claudius B. Farnsworth, of Pawtucket, in the county of Providence and State of Rhode Island, a citizen of said State of Rhode Island; against Gorham P. Pomroy, of said city and county of Providence, in the State of Rhode Island, a citizen of said State of Rhode Island; against the Quidnick Company, a corporation duly created by the General Assembly of the State of Rhode Island, located and doing business in said State of Rhode Island, and a citizen of said State of Rhode Island; against the A. & W. Sprague
60*b* Manufacturing Company, a corporation duly created by the General Assembly of the State of Rhode Island and located and doing business in said State of Rhode Island, a citizen of said State of Rhode Island; against William Sprague, of the town of South Kingston, in the county of Washington, in said State of Rhode Island, a citizen of said State of Rhode Island; against Amasa Sprague, of the town of Warwick, in the county of Kent, and State of Rhode Island, a citizen of said State of Rhode Island; against said William Sprague, as administrator on the estate of Fanny Sprague, late of the city and county of Providence, in the State of

Rhode Island, and a citizen of the State of Rhode Island, deceased; against Mary Sprague, of said city and county of Providence, in the State of Rhode Island, and against Zechariah Chafee, of the said city and county of Providence, in the State of Rhode Island, and a citizen of said State of Rhode Island.

And thereupon your orator complains and says that he filed in this honorable court his original bill of complaint against the said Quidnick Company, the said A. & W. Sprague Manufacturing Company, the said William Sprague, the said Amasa Sprague, the said Fanny Sprague (since deceased), the said Mary Sprague, and the said Zechariah Chafee on the 2d day of August, A. D. 1883; that subpœnas were duly issued and served on each of said defendants, but that none of said defendants appeared and made answer to said original bill up to the time of filing the supplemental bill filed by your orator in this honorable court on the thirty-first day of August, A. D. 1883; that in said original bill your orator prayed that an injunction might issue restraining and enjoining the said Quidnick Company, the said Zechariah Chafee, the said A. & W. Sprague Manufacturing Company, the said William Sprague, the said Amasa Sprague, the said Mary Sprague, and the said Fanny Sprague from selling, transferring, voting upon, or in any manner interferring with any of the stock or the capital of said Quidnick Company mentioned in said original bill, and from collecting or receiving any dividends thereon, and restraining the said Fanny Sprague and the said Mary Sprague from making any transfer or disposition of any right or property they or either of them may claim in and to said stock of said
60c Quidnick Company as trustees, and from voting upon the same or in any manner interfering therewith, and restraining the said Quidnick Company from recording any assignment or transfer of said stock to any person other than your orator, and from paying any dividends or profits thereon otherwise than to your orator or into the registry of this court, to be held subject to the order of this court pending the hearing and consideration of your orator's said bill of complaint or until other and different order of this court.

And your orator further says that with said original bill he filed a petition for a special injunction, containing the same prayer as in said original bill mentioned, and supported said petition by affidavits; that process on said petition was duly issued and served on each of said defendants, and that on the return day of said process said petition was continued for hearing to the fifteenth day of September, 1883.

And your orator further avers that since the filing of your orator's said original bill of complaint and before the filing of his supplemental bill filed August 31, 1883, said Quidnick Company, recognizing the title of your orator to 4,022 shares of the capital stock of the said Quidnick Company, as averred by your said orator in his said original bill of complaint, and that your orator was entitled to receive a certificate therefor, has received the deeds mentioned and described in your orator's said original bill as Complainants' Exhibits C, D, F, and G, and by its proper recording officer has duly recorded the

same, and has, under the seal of said Quidnick Company, duly issued to your orator a certificate for 4,022 shares of said capital stock of said Quidnick Company.

And your orator further avers that since the filing of his said original bill of complaint your orator filed on, to wit, the thirty-first day of August, A. D. 1883, in this honorable court, a supplemental bill of complaint against said Gorham P. Pomroy, the said Quidnick Company, the said A. & W. Sprague Manufacturing Company, the said William Sprague, the said Amasa Sprague, the said Fanny Sprague, the said Mary Sprague, and the said Zechariah Chafee; that subpœnas were duly issued and served on each of said defendants; that in said supplemental bill your orator sets forth that certain parties claiming to be creditors of said A. & W. Sprague Manufacturing Company, said Amasa Sprague, said William Sprague, said Fanny Sprague, and said Mary Sprague had commenced proceedings in the supreme court of Rhode Island since the filing of your orator's said original bill of complaint, claiming that said Fanny Sprague and Mary Sprague held said 4,022 shares of capital stock of said Quidnick Company as assignees for the benefit of the creditors of said A. & W. Sprague Manufacturing Company, said William Sprague, Amasa Sprague, Fanny Sprague, and Mary Sprague under transfers described in your orator's said original bill of complaint, and that a decree of said supreme court was obtained purporting to remove the said Fanny Sprague and Mary Sprague from their pretended trust under said pretended assignment and to appoint said Gorham P. Pomroy in their place and stead; that said Pomroy now claims to be the assignee in the place and stead of said Fanny and Mary Sprague of said 4,022 shares of the said capital stock of said Quidnick Company; that your orator was in no way a party to the proceedings by which said Pomroy claims to be the assignee as aforesaid, and that he never was appraised of the pendency thereof; that as a non-assenting creditor such proceedings could not test the validity of said pretended transfers as to your orator; that prior to the commencement of said proceedings in the State court your orator had filed his said original bill in this honorable court in this cause, and to which both said Mary and Fanny Sprague were made parties and served with process of this court, to determine the rights of your orator to said 4,022 shares of stock; that this honorable court had jurisdiction therefor, but that said supreme court of Rhode Island was without jurisdiction to determine the right of your orator to said 4,022 shares of stock, and praying for leave to file certain exhibits.

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And your orator further sets forth in his said supplemental bill filed Aug. 31, 1883, that said Pomroy, claiming to be assignee as aforesaid, and as said assignee a stockholder in said Quidnick Company, claiming to hold said 4,022 shares of said stock, a majority of the number of shares of the capital stock of said Quidnick Company, intended to hold a meeting of the so-called stockholders of said Quidnick Company, and, disregarding your orator's claim, at said meeting to vote to remove the president and other officers of said Quidnick Company and to elect other persons

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in their place, and said Pomroy intended to issue to himself new stock of said company as assignee aforesaid.

And by means of said officers so elected to take possession of certain mills situated in the town of Warwick, in Rhode Island, and of other valuable property belonging to said Quidnick Company and to use the same and to appropriate the dividends which may be realized on said 4,022 shares of the stock of said Quidnick Company, and that said Pomroy intended, through the officers so elected, to run said mills for his benefit as assignee; that if said Pomroy should consummate his intended action it would greatly depreciate the value of the stock owned by your orator and prevent a sale thereof at a price commensurate with its true value; that in said supplemental bill your orator prayed that the proceedings had in the supreme court of Rhode Island might be decreed to be null and void, and that pending the hearing on your orator's said original and supplemental bill and until further order of the court a special injunction might issue from this court enjoining and restraining said Gorham P. Pomroy, claiming to be assignee as aforesaid, from holding said contemplated meeting, from voting upon said stock, and from removing the president and other officers of said Quidnick Company, or in any manner interfering with said shares of stock, and from alienating, selling, and transferring the same, and from collecting and receiving any dividends thereon, and from making any disposition of any right or property he may claim in and to said shares of stock as assignee as aforesaid; and that, further, your orator might be decreed to be the owner of said 4,022 shares of the capital stock of said Quidnick Company.

And, further, that the original and supplemental bill of your orator might be taken as his affidavit for the purpose of obtaining the injunction aforesaid, and that your orator might have such other and further relief as his cause might merit and as to the court should seem meet.

60*f* And your orator shows unto your honors that he is informed and believes that since the filing of his said supplemental bill a meeting of certain of the respondents to this bill who claimed and now claim to be the holders and owners of the whole of the capital stock of said Quidnick Company was held; that said meeting was held on, to wit, the first day of September, A. D. 1883, in said city of Providence; that Gorham P. Pomroy was present at said meeting and assumed the right as assignee aforesaid to vote upon said 4,022 shares of Quidnick Company's stock; that said Claudius B. Farnsworth was present at said meeting and assumed the right as the administrator with the will annexed upon the estate of Edwin Hoyt, late of the city, county, and State of New York, deceased, to vote upon three hundred and twenty-nine shares of the capital stock of said Quidnick Company, and that said Pomroy and Farnsworth, claiming to be the owners and holders of the capital stock of the Quidnick Company as aforesaid, and to have the right to vote thereon, did vote at said meeting to remove the then acting and legally-elected officers of said Quidnick Company and to substitute and appoint in their place and stead Stephen

Harris, of said city of Providence, as president and Charles B. Gould, of said city of Providence, as treasurer of said Quidnick Company, both of whom are made respondents to this bill.

And your orator avers that neither said Pomroy nor said Farnsworth had any certificate of stock in said Quidnick Company showing that they or either of them were entitled to vote upon such stock; that there had been no transfer of stock to them or either of them upon the books of said corporation of stock therein, and that neither said Pomroy nor said Farnsworth had personally or in their said representative capacity any right under the charter and by-laws of said Quidnick Company or under the law to vote for the removal of the officers of the Quidnick Company legally elected and to substitute said Harris and said Gould in their place and stead.

And your orator further shows that said Claudius B. Farnsworth was appointed by said supreme court of Rhode Island custodian of all the estate and property of said Quidnick Company by a decree entered by said court September 10, 1881; that William
60*g* Sprague, one of these respondents, had held possession of the estate and property of said Quidnick Company and had operated its mills by the consent of said Farnsworth, custodian, under authority of said supreme court; that on the 27 day of Oct., A. D. 1883, said Farnsworth filed an application in said supreme court for a writ of assistance to obtain the possession and control of all the personal property and estate of said Quidnick Company then in the hands of said Sprague, and that, upon said application, the said court made a decree, entered on the third day of December, A. D. 1883, ordering said Sprague to deliver said personal estate and property of said Quidnick Company to the said Farnsworth on or before 12 o'clock noon of the fourth day of December, A. D. 1883; that he is informed & believes said Sprague duly complied with such decree and order and delivered said property to said Farnsworth, and that said Sprague also abandoned, quit possession of, and delivered up all the mills, real estate, and all other property of said Quidnick Company to said Farnsworth or said Harris or both of them. Your orator avers that after the pretended election of said Harris and said Gould as the officers of said Quidnick Company the said Harris, styling himself president of said Quidnick Company, filed a petition in behalf of said company in said supreme court of Rhode Island on, to wit, the 7th day of Dec., A. D. 1883, asking said court to dissolve its injunction against the sale or other disposition of the property of said Quidnick Company, made at the time of the appointment of said Farnsworth as custodian, to wit, on September 10, 1881, as aforesaid, and praying that said custodian might be directed to deliver all the property of said corporation, said Quidnick Company, in his possession, custody, or control to said Quidnick Company, and that said company might be permitted to operate its mills and to manage and dispose of its estates and property, said Harris representing that a continuance of said injunction and the retention by said custodian of said property of the Quidnick Company would subject said company to great and unnecessary expense.

Your orator avers that upon the application of said Harris as aforesaid the said supreme court of Rhode Island made a decree entered on the tenth day of December, A. D. 1883, the 59th day of the October term, A. D. 1883, of said court, so far modifying its de-
60*h* cree of September 10, 1881, as aforesaid, as to permit and authorize the said Quidnick Company to sell and dispose of its real estate and mills and the machinery therein contained, its stock in process, and other personal property in and about said mills.

Your orator further shows that immediately upon the entry of the decree of said supreme court modifying its injunction against the sale of the property of said Quidnick Company the said Harris and Gould, claiming to be the officers of said Quidnick Company, and the said Pomroy and Farnsworth, claiming to own the whole of the capital stock of said Quidnick Company, and the said Farnsworth as custodian aforesaid, combined and confederated together to sell the property and estate of the Quidnick Company to the Union Company, an alleged corporation created by the General Assembly of Rhode Island, located and doing business in said city of Providence, for a sum of money very much less than the true value of the estate and property of said Quidnick Company, with the design of defrauding your orator and of injuring and impairing the value of his stock by such sale; that in pursuance of the purpose aforesaid the said Harris advertised the sale of all of the property of said Quidnick Company at public auction in the said city of Providence on the 10th day of January, A. D. 1884, the said Harris, Gould, Pomroy, Farnsworth, and the said Union Company and its officers well knowing that with the pendency of the various suits described in your orator's original bill of complaint touching the ownership of the stock in said Quidnick Company and the various clouds upon the title to the property of said Quidnick Company that the same could not and would not be sold for anything near its true value and worth.

Your orator further shows that the said property of the Quidnick Company was offered for sale at public auction in said city of Providence on the 10th day of January, A. D. 1884, in accordance with said advertisement, and was purchased on that day by the said Union Company for the sum of two hundred & sixty thousand dollars, said sum being the highest sum bid therefor, and that the said Harris and Gould, acting as the officers of said Quidnick Company, executed and delivered, on the 2d day of April, A. D. 1884, to the said
60*i* Union Company a deed of the Arctic Mill estate, so called, part of the property of the said Quidnick Company, so pretendedly sold to said Union Company, and placed said Union Company in the possession and control of said Arctic Mill estate, a certified copy of which said deed of the Arctic Mill estate to said Union Company is hereunto annexed and marked Exhibit H and made a part hereof, and reference thereto is hereby had for the terms and conditions thereof and for a description of the property thereby conveyed.

Your orator further avers, on information and belief, that the said Gould, acting as the treasurer of said Quidnick Company, received the consideration money paid by the said Union Company for the

pretended purchase of the property and estate of said Quidnick Company as aforesaid, and now has the same in his hands and possession and under his control.

And, as to the estate and property of said Quidnick Company other than said Arctic Mill estate, your orator avers, on information and belief, that the said Union Company now has the possession and use of the same, and that although no deed of said property of said Quidnick Company other than said Arctic Mill estate to said Union Company is upon record, yet your orator is informed and believes that said Harris and Gould, assuming to act as the legal officers of said Quidnick Company, have executed and delivered such deed to said Union Company, and that said Union Company has deeds from said Harris and Gould of all the property of said Quidnick Company.

Your orator further shows unto your honors that since the execution and delivery of the deeds from said Harris and Gould, acting for said Quidnick Company, to said Union Company, on, to wit, the 2d day of April, A. D. 1884, the said Union Company has executed and delivered to the said B. B. & R. Knight a deed of the Arctic Mill estate, so called, and that the said B. B. & R. Knight have been placed in the possession of said Arctic Mill estate, as your orator is informed and believes, and that they are now using and operating the mill and using the other property included in said Arctic Mill estate, and, as your orator is informed and believes, the said B. B. & R. Knight paid to said Gould, as treasurer of said Union Company, the sum of one hundred and seventy-five thousand dol-
60*j* lars for said Arctic Mill estate as the purchase-money therefor, and that, as your orator is informed and believes, said sum has been appropriated by said Union Company to its own use; a certified copy of which deed from said Union Company to said B. B. & R. Knight is hereunto annexed and marked Exhibit I and made a part hereof, and reference thereto is hereby had for its terms and conditions and for a description of the property thereby conveyed.

And your orator further shows that since the pretended sale by said Harris and Gould of the said property of the Quidnick Company to the said Union Company as aforesaid, on, to wit, the fifteenth day of March, A. D. 1884, the said Harris and Gould, claiming to be the officers of and to act for the said Quidnick Company, filed in the supreme court of Rhode Island a bill in equity representing that the said Quidnick Company has declared a dividend of twenty ($20) dollars on each share of the capital stock of said Quidnick Company, payable at the office of said Gould as treasurer of said Quidnick Company on and after the fourteenth day of March, A. D. 1884, and setting forth that inasmuch as your orator, Appleton Sturgis, of the city, county, and State of New York; said Claudius B. Farnsworth, as administrator as aforesaid; said Gorham P. Pomroy, claiming to be assignee as aforesaid; Zechariah Chafee, trustee and assignee as aforesaid, and one Thomas C. Greene, of Warwick, Rhode Island, receiver of the Franklin Institution for Savings, a corporation duly created by the General Assembly of Rhode Island and located and

doing business in said city of Providence, severally claim title to all the capital stock of said Quidnick Company—that is to say, that your orator, said Pomroy, and said Chafee claim title to 4,022 shares of said capital stock, said Sturges and said Farnsworth claim title to 329 shares of said capital stock, and said Greene, as receiver, claims title to 2,619 shares of said capital stock, and praying that said supreme court will by its decree determine to whom said stock belongs, and in what proportion the same is owned by the several claimants thereto, and to whom the said dividend declared as aforesaid shall be paid.

And your orator avers, on information and belief, that since the filing of said bill in equity in the said supreme court of Rhode Island by said Harris and Gould a hearing upon said bill
60*k* has been had by said supreme court, and upon the evidence submitted at said hearing a decree has been made by said supreme court taking said bill as confessed by your orator and declaring that your orator is not entitled to the 4,022 shares of the capital stock of said Quidnick Company and is not the owner thereof, and perpetually enjoining your orator and all persons claiming under him from asserting any title to said 4,022 shares of stock and from claiming any dividends thereon and from commencing any actions or suits to recover any dividends on said stock; and your orator craves leave to refer to the records of said supreme court touching said suit of said Harris and Gould therein, if the same shall be necessary.

And your orator shows further unto your honors that in and by said decree of said supreme court said Thomas C. Greene, as receiver aforesaid, was adjudged not to be entitled to said 2,619 shares of the capital stock of said Quidnick Company, and said Greene was perpetually enjoined from asserting any claim to said shares of stock, and said Greene and all persons claiming under him are enjoined from commencing any suits for dividends on said shares of stock.

Aud further, in said suit in said supreme court, the said supreme court ordered said Harris and Gould to deposit the sum of eighty thousand four hundred and forty dollars, the amount alleged to be due as dividends on the capital stock of said Quidnick Company, in the registry of said court, and ordered said Chafee and Pomroy to interplead with each other touching their claim to said 4,022 shares of stock of said Quidnick Company.

And your orator charges that the said Pomroy and the said Farnsworth had no right, and that they well knew they had no right, to vote to remove the legally elected officers of said Quidnick Company and to substitute the said Harris and Gould in their place and stead; that the said Pomroy, Farnsworth, Gould, Harris, and the said Union Company unlawfully combined to dispose of the said property of the Quidnick Company in manner aforesaid to the said Union Company for the purpose of depreciating the value of your orator's stock and to prevent his selling the same for anything like its true value, and to prevent your orator from receiving any dividends on his said stock, to deprive your orator of his rights
60*l* and privileges as a stockholder in said corporation, said Quid-

nick Company, to divert the assets and property of said Quidnick Company from their legitimate use to an unlawful purpose, and that said Union Company combined with the said B. B. & R. Knight to wrong your orator and the true stockholders in said company by complicating the title to the property of said company and to place the property of said Quidnick Company out of the possession and control of the corporation, to injure your orator and other legitimate stockholders in said corporation by impairing the market value of their stock and by preventing them from receiving dividends or voting thereon; that said Union Company now holds unlawful possession and control of the property of said Quidnick Company, except so much as has been surrendered to said B. B. & R. Knight, and as to that, that said B. B. & R. Knight hold it unlawfully, in contravention of the rights of said Quidnick Company and of your orator as a stockholder therein; that the said bill in equity filed by said Harris and Gould, assuming to act as the officers of said Quidnick Company, was filed for the purpose of obtaining a decree of said supreme court to confirm and validate the titles of the various parties who have usurped the rights and privileges of said Quidnick Company and of your orator as a stockholder therein, and have unlawful possession of the property of said corporation, said Quidnick Company; that although your orator has never in contemplation of law been made a party to said bill in equity filed by said Harris and Gould in said supreme court, either as an officer or as a stockholder in said Quidnick Company, and your orator has never admitted and does not admit the jurisdiction of said supreme court to pass upon his rights as a stockholder in said Quidnick Company under said bill, and has not made himself and has not been made, in any manner whatsoever, legally a party to said bill, yet said decree *pro confesso* has been taken against your orator in said supreme court, seeking to determine your orator's rights as a stockholder in said Quidnick Company as aforesaid, and the said Harris and Gould, the said Union Company, and the said B. B. & R. Knight propose to act upon said decree at all times hereafter as though the same was final and conclusive upon the rights of your orator in the distribution of dividends, the sale of stock in said Quidnick Company, and in the transfer of property belonging to said Quidnick Company, and as to the ownership of said 4,022 shares of the capital stock of said Quidnick Company; all of which actings, doings, and pretences are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator, and that your orator is entirely without adequate remedy and can only have relief in the court of equity. To the end, therefore, that the said Harris and Gould, the said Union Company, the said B. B. & R. Knight, the said Farnsworth, the said Harris and Gould as claiming to be the officers of said Quidnick Company, and the said Farnsworth as claiming to be the administrator on the estate of said Edwin Hoyt, deceased, as aforesaid, may be made parties defendant to said suit of your orator and may full, true, direct, and perfect answer make to all and singular the matter in said original bill as amended and in your orator's first supplemental bill and in this your orator's supplemental bill, and

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hereinbefore stated, as if specially interrogated thereto (but without oath, your orator hereby waiving the oath to said answer), and true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also to the best of their several and respective information, hearsay, and belief.

And that the said proceedings so had in said supreme court of Rhode Island, as hereinbefore mentioned, as to your orator may be deemed null and void; that the meeting held as aforesaid, at which said Gorham P. Pomroy and said Claudius B. Farnsworth assumed to vote upon the stock of said Quidnick Company and to remove the legal officers thereof and to substitute said Stephen Harris and Charles B. Gould as the president and treasurer of said Quidnick Company as aforesaid and all the proceedings at said meeting may be decreed to be irregular, null, and void; that your honors will decree that said Pomroy and Farnsworth had no right to vote upon said stock of said Quidnick Company, as they pretended to do, and that said Harris and Gould have and had no right to act as the officers of said Quidnick Company, and that their acts and doings as such are of no force or validity whatever, and that said Pomroy and Farnsworth may be perpetually enjoined from holding any further or other meetings to vote for the removal or election of any
60*n* officer or officers of said Quidnick Company; that said Gorham P. Pomroy, Claudius B. Farnsworth, Stephen Harris, and Charles B. Gould, their agents, attorneys, and servants, may be perpetually enjoined from meddling in or interfering in any way with the affairs and business of said Quidnick Company or in the management thereof.

And that said Harris and Gould, said Union Company and its officers, and said B. B. & R. Knight may be ordered and directed to forthwith execute and deliver good and sufficient deeds and conveyances of the property of said Quidnick Company, releasing and discharging all their several claims upon the said property and the title thereof to the said Quidnick Company, or that your honors will decree that the several conveyances executed and delivered to and by the said Harris & Gould, the said Union Company and its officers, and the said B. B. & R. Knight, as aforesaid, are null and void, to the end that all cloud upon the title to said property of said Quidnick Company may be removed, and that said Harris and Gould, said Union Company, and said B. B. & R. Knight, their officers, attorneys, agents, and servants, may be decreed to forthwith deliver up all the estate and property of said Quidnick Company taken into their possession or into the possession of either of them to the said company, and if any such property has been destroyed or injured while in their custody or the custody of either of them that such loss or injury shall be made good to the full extent thereof, in money to be paid to said Quidnick Company.

And your orator prays a discovery as to all the deeds executed and delivered by said Harris and Gould, acting for the said Quidnick

Company, to said Union Company, as well as to the sum or sums of money paid by said Union Company as the consideration therefor to said Harris and Gould, or either of them, pretending to act as the officer or officers of said Quidnick Company.

And that a receiver may be appointed to take charge of the funds now in the hands of said Gould and of said Union Company or its officers, realized from the pretended sale or sales of said property of said Quidnick Company, to hold the same until the final order and decree of this court touching the matters hereinbefore set forth and mentioned, or until otherwise ordered by this honorable court.

60*o* And that, pending the hearing and consideration of your orator's said bill, supplemental bill, and this your orator's second supplemental bill, and until further and different orders made by this court, a special injunction may be issued from this court, enjoining and restraining the said Stephen Harris and Charles B. Gould and each of them from further prosecuting, in the said supreme court of Rhode Island, the said suit in equity commenced by them in the name and on behalf of the said Quidnick Company and now pending therein, and that said Harris and Gould may be enjoined from the commencement or prosecution of any other suit or suits at law or in equity in the name or on behalf of said Quidnick Company; and that said Harris and Gould may be restrained and enjoined from acting and assuming to act as officers of said Quidnick Company, and that said Harris and Gould may be restrained and enjoined from the payment of any dividend or dividends out of money in their hands, or in the hands of either of them, realized from the use of the property of said Quidnick Company, as aforesaid; and that said Harris and Gould, the said Union Company and its officers, and the said B. B. & R. Knight, their agents, attorneys, and servants, may be specially enjoined from executing and delivering to any person or corporation any conveyance, deed, or transfer pretending or purporting to convey title to any of the property of said Quidnick Company, and from further clouding the title thereto in any manner whatsoever; and that, pending the hearing & consideration of your orator's said bill, supplemental bill, and this your orator's second supplemental bill, and until further & different orders made by this court, the said Union Company and the said B. B. & R. Knight, their agents, attorneys, and servants, and all persons claiming under them or either of them, may be especially enjoined and restrained from occupying or using any mill or mills of said Quidnick Company and from operating the machinery therein or any part thereof, and that the property and estate of said Quidnick Co. may be placed in the possession and custody of such person or persons as this court may appoint to take charge of the same.

And that the said Charles B. Gould and the said Union Company and its officers may be specially enjoined and restrained from paying out or in any way disposing of the funds now in their hands and possession and realized from the pretended sale or sales by them of the property of said Quidnick Company until the further order of this honorable court; and that said Chafee and Pomroy may be

specially enjoined from the prosecution of any suit or suits at law or in equity in the said supreme court of Rhode Island touching the title or ownership of said 4,022 shares of the capital stock of said Quidnick Company.

And your orator further prays as he has prayed in and by his original bill as amended and in and by his first supplemental bill filed in this cause; and that for the purpose of obtaining the injunctions hereinbefore prayed for that your orator's original bill
60*p* as amended, signed, and sworn to by your orator, your orator's first supplemental bill, signed and affirmed to by your orator, and this second supplemental bill, subscribed and affirmed to by your orator, may be taken as the affidavits of your orator.

And that your honors will grant unto your orator such other and further relief as your orator's cause merits and to your honors shall seem meet; and that your honors may grant unto your orator a writ of subpœna, to be directed to said Stephen Harris, Charles B. Gould, said Union Company, said B. B. & R. Knight, Claudius B. Farnsworth, Gorham P. Pomroy, the said Quidnick Company, the said A. & W. Sprague Manufacturing Company, the said William Sprague individually and as administrator on the estate of said Fanny Sprague, deceased, the said Amasa Sprague, Mary Sprague, and the said Zechariah Chafee, directing them and each of them forthwith to be and appear before your honors in this honorable court, and then and there to answer all and singular the matters aforesaid (and the said Harris, Gould, said Union Company, said B. B. & R. Knight, and said Farnsworth to answer to all and singular the matters and things in said original bill and in said original bill as amended and in said first supplemental bill), and to stand to, abide, and perform such orders and decrees therein as to your honors shall seem meet.

And your orator will ever pray.

WM. H. BAKER,
BENJ. F. BUTLER,
Solicitors for Complainant.
EVAN RANDOLPH.

STATE OF PENNSYLVANIA, }
Philadelphia, } *ss:*

In the city of Philadelphia, in said county and State, on this 27th day of May, A. D. 1884, personally appeared Evan Randolph, of said city and a citizen of said State of Pennsylvania, and made solemn affirmation that he has read the aforegoing bill subscribed by him and knows the contents thereof, and that the matters therein stated as of his own knowledge are true, and as to the matters therein stated upon his information and belief they are true to the best of his knowledge, information, and belief, and this affirmation he makes upon the pains and penalties of perjury. Before me—

SAMUEL BELL,
U. S. Commissioner.

60q EXHIBIT H.

Know all men by these presents that whereas the Quidnick Company, a corporation duly incorporated by the General Assembly of the State of Rhode Island and organized and doing business in the city of Providence, in said State, at an auction sale of the premises hereinafter described, duly authorized by vote of the stockholders of said Quidnick Company, held on the 10th day of January, A. D. 1884, sold to the Union Company, a corporation duly incorporated by the General Assembly of said State and organized and doing business in said Providence, the premises hereinafter described, said Union Company being the highest bidder therefor at the sum of one hundred thousand dollars: Now, therefore, the said Quidnick Company, in consideration of said sum of one hundred thousand dollars paid to said Quidnick Company by said Union Company, pursuant to the terms of said auction sale, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the said Union Company, its successors and assigns forever, — the Arctic Mill estate, so called, in the village of Arctic, town of Warwick, and county of Kent, in said State, consisting of the several parcels of land hereinafter described on both sides of the road-bed or right of way of the Hartford, Providence and Fishkill Railroad Company and on both sides of the south branch of the Pawtuxet river, and containing in all about $99\frac{63}{100}$ acres of land, together with the mill and all the fixed and movable machinery and the tools, fixtures, apparatus, and furniture therein, the boiler-house, tenement-houses, barns, and all other buildings and improvements thereon, and also the dams, water rights, rights of flowage, reservoir rights, including all rights in the Quidnick reservoir belonging to said Arctic Mill estate, and all other rights and privileges belonging or in anywise appertaining to said estate.

The parcels of land aforesaid are respectively described as follows:

60r The first parcel, containing about $5\frac{27}{100}$ acres of land lying westerly of the right of way of said Hartford, Providence and Fishkill Railroad Company, is bounded and described as follows: Beginning at the point of intersection of the westerly line of said right of way with the easterly line of the highway or road leading from Providence to Quidnick, thence running in a general southerly direction, bounding easterly on said right of way to land now or formerly of C. and S. Harris; thence N. 82° 55′ W., bounding southerly on said Harris land $177\frac{3}{10}$ feet; thence S. $27\frac{1}{2}$° W., bounding easterly on said Harris land $375\frac{5}{10}$ feet; thence N. $65\frac{1}{4}$° W., bounding southerly on said Harris land $229\frac{2}{10}$ feet to said highway or road; thence in a general northerly direction, following said highway or road to the place of beginning.

The second parcel, containing about $\frac{18}{100}$ acres of land, is bounded and described as follows: Northerly on land now or formerly of John Fitzpatrick $116\frac{8}{10}$ feet, easterly partly on the right of way of said Hartford, Providence and Fishkill Railroad Company $34\frac{8}{10}$

feet, and partly on said road to Quidnick 32 9/10 feet, southerly on land now or formerly of Robert Pepperill 112 8/10 feet, and westerly on the road leading from said road from Providence to Quidnick to Birchville.

The third parcel, containing the balance of said 99 63/100 acres, including all streets, roads, and passage-ways not public property, is bounded and described as follows: Beginning at the northwesterly corner thereof, at a point where it joins the said road from Providence to Quidnick and land now or formerly of Charles Searle, thence running S. 64° E., bounding northerly on said Searle land 265 feet; thence S. 70¼° E., bounding northerly on land now or formerly of C. & S. Harris 146 2/10 feet; thence S. 34° 18′ W., bounding easterly on said Harris land 214 feet; thence S. 84° 25′ E., crossing the south branch of the Pawtuxet river and bounding northerly on said Harris land 1,132 6/10 feet; thence S. 84° 50′ E., bounding northerly on said Harris land 877 8/10 feet to a corner of wall; thence S. 19 1/10° E. 140 2/10 feet to a corner of fence and wall; thence S. 7½° E. 428 3/10 feet to the New London turnpike, and thence in a general southerly direction, bounding easterly on said turnpike about 1,890 2/10 feet to a stone bound at the northeast corner of land now or formerly of Charles Searle; thence N. 74° 50′ W., bounding southerly
60s partly on said Seale land, partly on land now or formerly of Beriah Potter, and partly on land now or formerly of Jonathan Brayton 836 7/10 feet to a stone bound on the northwest corner of said Brayton land; thence S. 22° 7′ W., bounding easterly partly on said Brayton land, partly on land now or formerly of Newell Durfee, and partly on land late of Benedict Lapham, deceased, 1708 7/10 feet to a stone bound on the southwest corner of said Lapham land; thence N. 81½° W. 139 feet to the river above the Arctic pond; thence N. 33½° W., crossing said river, 240 feet to a log of wood on edge of stream (an ancient bound); thence in a general northerly direction, following the westerly bank of said river, to a point where the easterly line of the right of way of said Hartford, Providence and Fishkill Railroad Company joins the westerly bank of said river; thence following said easterly line of said right of way to the point where said line meets the line of a highway, cross-road, or carriage road leading from said road from Providence to Quidnick, through said Arctic Mill estate to said New London turnpike; thence northerly across said cross-road to a point on said road from Providence to Quidnick at an angle of fence 150 3/10 feet from and in a direction S. 31° 30′ W. from the point of beginning; thence on said road from Providence to Quidnick 150 3/10 feet to the point of beginning:

To have and to hold the same, with all the rights, privileges, and appurtenances thereunto appertaining, unto and to the use of the said Union Company, its successors and assigns forever.

And the aforenamed Quidnick Company, for itself and its successors, does covenant with the said Union Company, its successors and assigns, that it will warrant and defend the aforedescribed premises to the said Union Company, its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under said Quidnick Company.

In testimony whereof said Quidnick Company has caused these presents to be signed by Stephen Harris, its president, and Charles B. Gould, its treasurer, and its corporate seal to be by them hereto affixed, they having been thereunto lawfully authorized by a vote of the stockholders of said company, this second day of April, A. D. 1884.

Signed, sealed, and delivered in presence of—

QUIDNICK CO.
STEPHEN HARRIS, *Pres't.*
[L. S.] CHAS. B. GOULD, *Treas.*

60*t* The words "the said Quidnick Company," on the 17th line of the first page, and the word "Hartford," on the 18th line of the second page, being first interlined; also the words "and movable" and the words "and the tools, fixtures, apparatus, and furniture," on the fifth line of the 2d page, having been interlined.

RATHBONE GARDNER.

STATE OF RHODE ISLAND, ETC., } *sc:*
Providence, }

In Providence, in said county, this third day of April, A. D. 1884, personally appeared before me Stephen Harris, the president, and Charles B. Gould, the treasurer, of the Quidnick Company, and severally acknowledged the foregoing instrument by them signed in their said capacity to be their free and voluntary act and deed and the free and voluntary act and deed of said Quidnick Company.

RATHBONE GARDNER,
Notary Public.

Recorded April 4, A. D. 1884, at 8.25 a. m.
Witness:

RINALDO HOYLE, *Town Clerk.*

TOWN CLERK'S OFFICE, WARWICK, R. I., *May* 13, 1884.

The foregoing is a true copy from pages 315, etc., of book No. 44 of the land evidence records in this office.
Witness:

RINALDO HOYLE, *Town Clerk.*

Fee, $2.25.

60*u* EXHIBIT I.

Know all men by these presents that the Union Company, a corporation duly incorporated by the General Assembly of the State of Rhode Island, organized and doing business in the city of Providence, in said State, for and in consideration of the sum of one hundred and seventy-five thousand dollars ($175,000) to it paid by Benjamin B. Knight and Robert Knight, both of said Providence, copartners as B. B. & R. Knight, the receipt whereof it does hereby acknowledge, does hereby grant, bargain, sell, and convey unto the

said Benjamin B. Knight and Robert Knight, copartners as aforesaid, their heirs and assigns forever, the Arctic Mill estate, so called, in the village of Arctic, town of Warwick and county of Kent, in said State, consisting of the several parcels of land hereinafter described on both sides of the road bed or right of way of the Hartford, Providence and Fishkill Railroad Company and on both sides of the south branch of the Pawtuxet river, and containing in all about 99.63 acres of land, together with the mill and all the fixed and movable machinery, fixtures, apparatus, tools, and furniture therein, the boiler-house, tenement houses, barns, and all other buildings and improvements thereon, and also the dams, water rights, rights of flowage, reservoir rights, including all rights in the Quidnick reservoir belonging to said Arctic Mill estate and all other rights and privileges belonging to said Arctic Mill estate or in anywise appertaining thereto.

The parcels of land aforesaid are, respectively, described as follows:

The first parcel, containing about 5.27 acres of land, lying westerly of the right of way of said Hartford, Providence and Fishkill Railroad Company, is bounded and described as follows: Beginning at the point of intersection of the westerly line of said right of way with the easterly line of the highway or road leading from Providence to Quidnick, thence running in a general southerly direction,

60*v* bounding easterly on said right of way to land now or formerly of C. and S. Harris; thence N. 82° 55′ W., bounding southerly on said Harris land 177.3 feet; thence S. 27½° W., bounding easterly on said Harris land 375.5 feet; thence N. 65¼° W., bounding southerly on said Harris land 229.2 feet to said highway or road; thence in a general northerly direction following said highway or road to the place of beginning.

The second parcel, containing $\frac{18}{100}$ of an acre of land, is bounded and described as follows: Northerly on land now or formerly of John Fitzpatrick 116.8 feet, easterly partly on the right of way of said Hartford, Providence and Fishkill Railroad Company 34.8 feet and partly on said road from Providence to Quidnick 32.9 feet, southerly on land now or formerly of Robert Pepperill 112.8 feet, and westerly on the road leading from said road from Providence to Quidnick to Birchville.

The third parcel, containing the balance of said 99.63 acres, including all streets, roads, and passage-ways not public highways or public property, is bounded and described as follows: Beginning at the northwesterly corner thereof, at the point where it joins the said road from Providence to Quidnick and land now or formerly of Charles Searle, thence running S. 64° E., bounding northerly on said Searle land 265 feet; thence S. 70¼° E., bounding northerly on land now or formerly of C. and S. Harris 146.2 feet; thence S. 34° 18′ W., bounding easterly on said Harris land 214 feet; thence S. 84° 25′ E., crossing the south branch of the Pawtuxet river and bounding northerly on said Harris land 1,132.6 feet; thence S. 84° 50′ E., bounding northerly on said Harris land 877.8 feet to a corner of wall; thence S. 19.1° E 140.2 feet to a corner of fence and

wall; thence S. 7½° E. 428.3 feet to the New London turnpike; thence in a general southerly direction, bounding easterly on said turnpike about 1,890.2 feet to a stone bound at the northeast corner of land now or formerly of Charles Searle; thence N. 74° 50′ W., bounding southerly partly on said Searle land, partly on land now or formerly of Beriah Potter, and partly on land now or formerly of Jonathan Brayton, 836.7 feet to a stone bound on the northwest corner of said Brayton land; thence S. 22° 7′ W., bounding easterly partly on said Brayton land, partly on land now or formerly of Newell Durfee, and partly on land late of Benedict Lapham, deceased, 1,708.7 feet to a stone bound on the southwest corner of said Lapham land; thence N. 81½° W. 139 feet to the river above the Arctic pond; thence N. 33½° W., crossing said river, 240 feet
60*w* to a log of wood on edge of stream (an ancient bound); thence in a general northerly direction, following the westerly bank of said river, to a point where the easterly line of the right of way of said Hartford, Providence and Fishkill Railroad Company joins the westerly bank of said river, thence following said easterly line of said right of way to the point where said line meets the line of a highway, cross-road, or carriage-road leading from said road from Providence to Quidnick, through said Arctic Mill estate to said New London turnpike; thence northerly across said cross-road to a point on said road from Providence to Quidnick at angle of fence 150.3 feet from and in a direction S. 31° 30′ W. from the point of beginning; thence on said road from Providence to Quidnick 150.3 feet to the point of beginning;

Being the same estate and premises conveyed to said Union Company by deed from the Quidnick Company of even date herewith and recorded herewith in the record of real estate transfers in said town of Warwick:

To have and to hold the same, with all the rights, privileges, and appurtenances thereunto appertaining, unto and to the use of Benjamin B. Knight and Robert Knight, copartners as aforesaid, their heirs and assigns forever.

And the aforenamed Union Company, for itself and its successors, does covenant with Benjamin B. Knight and Robert Knight, copartners as aforesaid, their heirs and assigns, that it will warrant and defend the aforedescribed premises to the said Benjamin B. Knight and Robert Knight, copartners as aforesaid, their heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under said Union Company.

In testimony whereof said Union Company has caused these presents to be signed by Henry W. Gardner, its president, and countersigned by Charles B. Gould, its treasurer, and its corporate seal to be by them hereto affixed, they having been thereunto duly authorized by a vote of the board of directors of said company, this second day of April, A. D. 1884.

Signed, sealed, and delivered in presence of—

UNION COMPANY.
HENRY W. GARDNER, *Pres't.*

Countersigned:
[L. S.] CHARLES B. GOULD, *Treas.*

60*x* The words "and movable," on the 25th line, and the words "fixtures, apparatus, tools, and furniture," on the 26th line of the first page, being first interlined.

RATHBONE GARDNER.

STATE OF RHODE ISLAND, &c., *Providence,* } *sc:*

In Providence, in said county, this third day of April, A. D. 1884, personally appeared before me Henry W. Gardner, the president, and Charles B. Gould, the treasurer, of the Union Company, and severally acknowledged the foregoing instrument by them signed in their said capacity to be their free and voluntary act and deed and the free and voluntary act and deed of said Union Company.

RATHBONE GARDNER,
Notary Public.

Recorded April 4, A. D. 1884, at 8.25 a. m.
Witness: RINALDO HOYLE,
Town Clerk.

TOWN CLERK'S OFFICE, WARWICK, R. I., *May* 9, 1884.

I certify the foregoing to be a true copy from pages 312, etc., of book No. 44 of the land evidence records in this office.

RINALDO HOYLE,
Town Clerk.

Fee, $2.25.

61 Circuit Court of the United States, District of Rhode Island, *sc.*

EVAN RANDOLPH
vs.
QUIDNICK COMPANY *et als.* } In Equity. No. 2059.

(*Answer of Zechariah Chafee. Filed September* 16, 1884.)

The answer of Zechariah Chafee, one of the respondents, to the above-entitled original, amended, and supplemental bill of complaint.

This respondent, reserving unto himself all benefit and advantage of exception to the many errors, inconsistencies, and insufficiencies in said bill of complaint—both as originally filed and as now amended and supplemented—contained, for answer thereunto or to so much and such part thereof as he is advised is material and necessary for him to make answer unto, answering, says—

That he is not informed, save by said bill, whether said complainant was in the year 1873 a creditor of the firm of Hoyt, Spragues & Company, as alleged in said bill, and neither admits nor denies, but leaves said complainant to prove the same as he may be advised.

That he did receive, on the first day of December, 1873, the said indenture bearing date November 1, 1873, referred to in said bill

and made a part thereof, marked "Complainant's Exhibit A," and he avers that said indenture was duly made and executed and delivered by said William Sprague, Amasa Sprague, A. & W. Sprague Manufacturing Company, Fanny Sprague, Mary Sprague, and
62 the firm of A. & W. Sprague, and this respondent did accept said indenture and join in the execution thereof, and he makes the said indenture, Exhibit A, a part of this answer.

That he denies the allegation of said amended bill "that the said indenture was not made or executed by the said William Sprague, Amasa Sprague, the A. & W. Sprague Manufacturing Company, Fanny Sprague, and Mary Sprague."

That he admits that the said William Sprague and Amasa Sprague were each the owner of 1,082 shares of the capital stock of said Quidnick Company prior to the said first day of December, 1873.

That he is not informed, save by said bill, as to said suit at law of said complainant alleged in said bill and as to the service and entry of said writ, the issuing of said writ of mesne process of attachment, the service thereof and the attachments thereunder, the judgment, issue of execution, levy, and service of said execution and sales thereunder, the purchase by said complainant at said auction sale, the making, execution, acknowledgment, and delivery of said deeds, and neither admits nor denies, but leaves said complainant to prove the same as he may be advised.

That he is not informed, save by said bill, whether said Waterman was a creditor of said A. & W. Sprague Manufacturing Company, as alleged, and leaves the complainant to prove the same as he may be advised.

That he admits that said Mary Sprague and Fanny Sprague were stockholders in said A. & W. Sprague Manufacturing Company, as alleged in said bill, but he is not informed whether or not they were liable for said alleged debt claimed to be due to said Waterman, and leaves the complainant to prove the same as he may be advised.

That he admits that in the year 1873 said A. & W. Sprague Manufacturing Company was the owner of 455 shares of the capital stock of the Quidnick Company, and that the said Mary Sprague was the owner of 601 shares and the said Fanny Sprague was the owner of 802 shares of the capital stock of said Quidnick Company.

That he is not informed, save by said bill, whether the said Waterman, as alleged in said bill, applied for payment of said indebtedness, and whether said A. & W. Sprague Manufacturing Company admitted and acknowledged said indebtedness and promised to pay the same to him and to provide for the full settlement of his claim and acknowledged the justice and validity of said claim, but failed to pay the same, and whether the said Waterman took all the steps in bringing suit to enforce payment of said claim and all the subsequent proceedings thereunder alleged in said bill, and whether
63 said complainant became the purchaser of said stock and received the deeds thereof, as alleged in said bill, and neither admits nor denies, but leaves said complainant to prove the same as he may be advised.

And this respondent says that he does claim and that it is the fact

that said A. & W. Sprague Manufacturing Company and said other grantors or parties of the first part in said trust conveyance, Exhibit A, were at the date thereof respectively holders and owners of large amounts of the capital stocks of various banks and other corporations, including said Quidnick Company, and also including sundry manufacturing corporations which were largely indebted or insolvent and in which the stockholders were also personally liable for the corporation debts under the statute then in force, so that under the advice of eminent counsel both here and from the city of Boston, called in consultation by or in behalf of the creditors, that it was or might be doubtful how far the trustee, if he took a conveyance of all such stocks, might become also personally liable for such debts, the clause was inserted in said conveyance, viz: "Excepting from this conveyance all shares of capital stock in any and every corporation, wherever located, belonging to any or either of the parties of the first part," and inserting the following agreement and covenant, viz: "The same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security to secure the performance of the conditions of this instrument," as by reference hereby had to said conveyance will fully appear, thus enabling said Chafee as trustee thereunder, at any time or from time to time, to call for the transfer to himself as trustee, and as security for the creditors under said trusts, of such stocks as he shall find of sufficient value to justify his taking the same; that accordingly the next day after the delivery to him of said trust conveyance he did call upon said parties of the first part, grantors therein, to transfer to him their shares aforesaid in said Quidnick Company, and said parties thereupon, on the second day of December, 1873, respectively made and executed to this respondent upon the stock transfer book of said Quidnick Company transfers of the shares of stock in said company then held by them, respectively, in the following form, viz:

"For value received I, ——— ———, hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage, dated November 1, — shares of the capital stock of the Quidnick Company,"

the said Amasa and William thus transferring to this re-
64 spondent each 1,082 shares, and the said Fanny Sprague 802 shares, and the said Mary Sprague 601 shares, and the said A. & W. Sprague Manufacturing Company 455 shares, thus together making the 4,022 shares aforesaid, and which are of the par value of one hundred dollars per share; that to further protect the interest of the creditors in said shares and secure to the creditors the full benefit thereof said parties, on the twenty-second day of December, 1873, by transfers duly made and executed by them, respectively, upon said stock transfer book of said Quidnick Company, transferred and assigned their respective remaining right, title, and interest and equity of redemption in said shares so held by them, respectively, as follows: The said Amasa Sprague, William Sprague, Mary Sprague, and said A. & W. Sprague Manufacturing Company each transferred to said Fanny Sprague their respective shares in trust for the equal benefit of all their respective creditors, and the said Fanny Sprague

in like manner transferred her remaining right, title, and interest in her shares aforesaid to the said Mary Sprague in trust for the equal benefit of all her creditors; all which, by reference to said stock transfer book of said Quidnick Company, to which, for the transfers aforesaid when produced in court, this respondent craves leave to refer as part of this answer, will fully appear.

And this respondent, further answering, says that he denies that the said Waterman never in any way assented to, ratified, or affirmed the said indenture, Exhibit A, or any transfers, conveyances, or proceedings thereunder; but this respondent is informed and believes and avers it to be true that the said Waterman was present at the general meeting of the creditors of the A. & W. Sprague Manufacturing Company, hereinafter referred to, when the trust mortgage, Exhibit A, and the scheme of extension and settlement proposed to be carried out thereunder were approved by the creditors; that he took part in said meeting as a creditor of said A. & W. Sprague Manufacturing Company, and did not then nor at any other time protest against the carrying out of said scheme, but did then acquiesce and at all times since down to the time of commencement of said suit at law, for the space of more than eight years, has acquiesced in said plan or scheme of settlement, has recognized this respondent as the trustee of said A. & W. Sprague Manufacturing Company under said trust mortgage, from time to time and at all times since the execution and delivery thereof, and down to the time of commencement of said suit at law.

That the said complainant has never, from the time of the execution of said trust mortgage, Exhibit A, and the said trans-
65 fers of said stock made in pursuance of the terms and provisions thereof, as above set forth, down to the time of suing out his said writ of mesne process, to wit, for the space of more than eight years, taken any step to disaffirm or set aside said conveyances, although well knowing the same to have been made as aforesaid, and is now by his own laches barred from attacking or attempting to invalidate the same.

And this respondent denies that the said indenture, Exhibit A, and the said transfers of said stock above set forth were and are as against said complainant and said Waterman null and void, both by the general law and by the provisions of the General Statutes of Rhode Island, chapter 162, section 1, and of the Public Statutes of Rhode Island, chapter 173, section 1.

And this respondent avers that the said indenture, Exhibit A, was made in good faith by the grantors and the grantee therein named for the purpose of derating and applying the property of the A. & W. Sprague Manufacturing Company and the other grantors therein named for the equal benefit of all their creditors and for no other purpose, for the reasons, in the manner, and under the circumstances following, to wit: The A. & W. Sprague Manufacturing Company owned and possessed properties of great extent and value in this State and other States and were extensively engaged in business of various kinds, namely, in the manufacture of print cloths and prints, and were owing debts to a very large amount, and in

or about the month of October, A. D. 1873, became embarrassed and unable to meet their pecuniary obligations at maturity. On the first day of December, A. D. 1873, at the special request of Amasa Sprague, Mary Sprague, Fanny Sprague, and the parties representing William Sprague and the A. & W. Sprague Manufacturing Company, this respondent accepted the position of mortgagee in trust of all the Sprague estates, individual and corporate, for the benefit of the creditors. A copy of the deed so accepted by this respondent and executed by the A. & W. Sprague Manufacturing Company, William Sprague, Amasa Sprague, Mary Sprague, Fanny Sprague, and the copartnership of A. & W. Sprague is attached to the bill of complaint in this cause and marked "Exhibit A" and is made a part of this answer.

Afterwards, on the 6th day of April, A. D. 1874, the said corporation, the A. & W. Sprague Manufacturing Company, the said Amasa Sprague, the said William Sprague, and the copartnership known as A. & W. Sprague severally executed to this defendant, in trust for the benefit of their respective creditors, voluntary deeds
66 of assignment of all their property and estate, as will appear from copies of such assignments marked, respectively, Exhibits 2, 3, 4, 5, annexed to and made a part of this answer. Under the said trust mortgage and deeds of assignment above mentioned this respondent has acted as trustee and assignee of all the Sprague properties from that time to the present, and is now acting in those capacities.

The trust mortgage above referred to was the result of careful preparation on the part of the legal counsel of a committee of the Sprague creditors and met with the approval of such committee. When the A. & W. Sprague Manufacturing Company first felt the pressure of financial embarrassments, in apprehension of the necessity of suspending payment unless pecuniary assistance was promptly afforded, it called a conference of the presidents of the leading banks of the city of Providence, which held the obligations of the corporation, and requested a loan of money to be secured by a mortgage on the Sprague property.

A committee of examination appointed at this conference reported adversely to this plan in consequence of doubts entertained by them, under the advice of their counsel, as to the validity of a mortgage under the circumstances in view of the provisions of the then existing bankrupt act.

A committee was then appointed to make examination into the affairs of the corporation and its indebtedness, which committee made report on or about the first day of November, 1873, recommending the execution of a trust mortgage, which had been in the meantime prepared, and which in tenor and effect was substantially the same as "Exhibit A" attached to the bill of complaint. Afterwards a general meeting was called, upon notice through the newspapers in Providence and elsewhere, for the creditors to meet at the city of Providence on the 6th of November, 1873. This meeting was very largely attended. The trust mortgage, which had been prepared, was submitted to the meeting and approved, and Rufus

Waterman, Amos D. Lockwood, and George C. Nightingale were designated as trustees. These gentlemen so designated as trustees employed eminent counsel in Boston, New York, and Providence to revise the form of the trust mortgage, especially with reference to protecting the trustees against personal liability in the anticipated business of operating as trustees the manufacturing properties for the benefit of the creditors.

About three weeks elapsed in the effort to make the trust conveyance satisfactory to the gentlemen designated by the creditors to act as trustees, and finally, on the 29th day of November, 1873, they addressed a letter to William J. King, Esq., chairman of the
67 creditors' meeting, wherein they stated that they could not see their way clear to accept the trust, but under the advice of counsel must decline to do so unless the Sprague creditors should, in advance of their acceptance of the trust, take some action to protect them against personal liability. A copy of this letter is hereunto annexed and made a part hereof, marked "Exhibit I." Thereupon the officers of the A. & W. Sprague Manufacturing Company and all the stockholders, with the exception of William Sprague, who had absented himself from the city of Providence during the whole period of the Sprague embarrassment, earnestly solicited this respondent to accept the office of trustee under the mortgage, and, as hereinbefore stated, this defendant complied with such request and immediately entered upon the discharge of the duties of said office, and from the 1st day of December, 1873, to the present time has devoted his entire time and best capacity to the management of the complicated business which devolved upon him.

And as to the said transfers of stock above set forth this respondent says that the same were made in good faith in pursuance of the terms of said indenture, "Exhibit A," and for the purpose and with the intent only of applying and devoting said stock of said Quidnick Company to the payment of the indebtedness of said parties, according to the agreement and arrangement above set forth between the said creditors and the said debtors.

And the respondent denies that by reason of any matter or thing or by virtue of any proceeding set forth in said bill said complainant became the owner of the whole or any part of said shares of stock of said Quidnick Company, as against the title of this defendant above set forth, or entitled thereto or to have the same or any part thereof transferred to him, or a certificate thereof and therefor issued to him; and further avers that if any such pretended levies of execution and sales thereunder were made as alleged in said bill the same and each of them were and was entirely irregular, without authority of law and void.

And as to the allegations of said supplemental bill this respondent denies that the said Quidnick Company has by any proper lawful action or at any legal meeting thereof or in any lawful way or manner whatsoever recognized the title of said complainant to said 4,022 shares of said stock, or has duly and lawfully issued to said complainant any certificate therefor, but admits that said complainant

did hold a paper purporting to be a certificate of said shares of said stock, as alleged in said bill.

And this respondent admits the said proceedings before said supreme court of said State of Rhode Island, which resulted in the appointment of said Gorham P. Pomroy, assignee.

68 And this respondent, further answering generally to said bill of complaint, avers and charges as follows:

That while said proceedings in said several petitions set forth in said bill, which resulted in said appointment of said Pomroy, assignee as aforesaid, were pending in said supreme court, and while the orders made therein by said court were in full force and effect, the said William Sprague, Amasa Sprague, Fanny Sprague, Mary Sprague, and A. & W. Sprague Manufacturing Company and the said complainant, Evan Randolph, and one J. Cooke Longstreth, fraudulently conspiring together and with the intent and design to prevent said stock so held by said Mary and Fanny Sprague, as assignees as aforesaid, from coming into the possession of said Pomroy, and for the purpose of throwing a cloud upon his title to said stock, and with the further purpose and design of fraudulently preventing the decrees of said supreme court from being executed, caused this suit in equity to be commenced on or about the second day of August, 1883, in this court; that the said defendants, the said William Sprague, Amasa Sprague, Mary Sprague, Fanny Sprague, the said A. & W. Sprague Manufacturing Company, the said Evan Randolph and J. Cooke Longstreth, further conspiring to defraud the creditors of said A. and W. Sprague Manufacturing Company and of William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague and to throw a cloud upon the title of the said Pomroy and of this respondent to said stock and to prevent the execution of said decree of said supreme court, caused, as this respondent is informed, the said Fanny Sprague, as assignee of the said William Sprague, Amasa Sprague, Mary Sprague, and A. & W. Sprague Manufacturing Company of said stock as aforesaid, and the said Mary Sprague, as assignee of said Fanny Sprague of said stock as aforesaid, while the orders made in said petition were in full force and uncomplied with, to transfer upon the stock transfer book of said Quidnick Company the entire 4,022 shares of said stock held by the said Fanny Sprague and Mary Sprague, as assignees as aforesaid, to said complainant, Evan Randolph, in fraud of said Pomroy's rights in the premises and in derogation and contempt of the orders of said supreme court, hereinbefore referred to; and this respondent further avers that no consideration whatever was paid by said Evan Randolph to said Fanny Sprague and Mary Sprague, assignees, or either of them, and that the said Evan Randolph received the said transfers from the said Fanny and Mary Sprague with full knowledge that they had no authority to convey the same and with fraudulent intent to deprive said Pomroy of said stock and prevent him

69 from disposing of the same for the purposes of his said trust as assignee as aforesaid, and with full knowledge of the pendency of said petitions in said supreme court and of the orders therein made, and subsequently, to wit, on or about the 6th day of August,

1883, conspiring and fraudulently combining with the same William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague and the A. & W. Sprague Manufacturing Company to defraud said Pomroy of his right to said stock and to throw a cloud upon his title thereto, procured the said William Sprague, claiming to be the president of said Quidnick Company, to issue to him, the said Randolph, a certificate under the seal of said Quidnick Company of 4,022 shares of the capital stock of said company in the following form:

No. 43.

Quidnick Company, Providence, R. I.

Capital, $500,000. Incorporated 1862. 5,000 shares, $100 each.

This is to certify that Evan Randolph, of Philadelphia, is the owner at the date hereof of four thousand twenty-two shares of capital stock of the Quidnick Company, transferable only upon the books of the said company at their office, in Providence, R. I.

WILLIAM SPRAGUE, *President.*

W. SPRAGUE, *Secretary.*

Providence, R. I., Aug. 6th, 1883.

And this respondent avers that the said pretended certificate was issued without authority of said Quidnick Company and is wholly void and of no effect, and was fraudulently issued by those claiming to be officers of said Quidnick Company, signing the same with the purpose and intent of preventing said Pomroy from obtaining possession of said stock and to throw a cloud upon his title thereto and embarrass him in the execution of his trusts as assignee as aforesaid.

And this respondent avers that the said Evan Randolph and J. Cooke Longstreth, with the concurrence and assent of the said William, Amasa, Mary, and Fanny Sprague and the said A. & W. Sprague Manufacturing Company, without any notice to or knowledge of any of the rightful stockholders of said Quidnick Company, have, at some time and place to this respondent unknown, held some pretended meeting of said Quidnick Company, and claim to have elected the said Evan Randolph as president and the said J. Cooke Longstreth as secretary of said Quidnick Company, and in violation of law caused the records of transfers of stock of said Quidnick Company and the record book of the meetings of said Quidnick Company to be removed without this State to the State of Pennsylvania.

And this defendant further avers that at a meeting of said Quidnick Company held on the first day of September, 1883, at the office of said Pomroy, in the city of Providence, at which said Pomroy, representing said 4,022 shares of said stock of said Quidnick Company, and said Claudius B. Farnsworth, administrator in Rhode Island of the estate of Edwin Hoyt, deceased, representing 327 shares of said stock, being the entire number of shares of stock of said company now outstanding, by an unanimous vote of all said

stockholders it was voted that all the offices of said company be declared vacant, this said vote being passed in compliance with the provisions of the charter of said company, and that at the same meeting, by a like unanimous vote, Stephen Harris, of Warwick, in said State, was elected president and Charles B. Gould, of said Providence, was elected secretary and treasurer of said company; and the respondent avers that said persons are now, by virtue of said election, the legal and duly qualified officers of said company.

And this respondent further avers that the said defendant Quidnick Company, on or about the 15th day of March, A. D. 1884, and before the answers became due in this cause, filed in said supreme court of Rhode Island for the county of Providence its bill of interpleader in equity, No. 2233, against this respondent Chafee, trustee and assignee as aforesaid, and Gorham P. Pomroy, assignee, and against said complainant, Evan Randolph, and against Thomas C. Greene, receiver of the Franklin Institution for Savings, setting forth that said Quidnick Company, having sold all its property and discontinued its business of manufacturing, had declared a stock dividend in liquidation, payable to its stockholders out of the funds derived from said sales; that said defendants in said bill named each made claim to the whole or parts of said 4,022 shares of said stock of said Quidnick Company, and praying that said defendants might be ordered to set forth their several claims of title to said shares of stock, and to interplead as to the said titles in order that said court might determine in whom the title to said 4,022 shares of stock was vested and to whom the said dividends thereon ought to be paid; and that thereupon subpœnas were duly issued and personally served on said
71 Randolph, complainant in this suit, and upon said other defendants; yet said Randolph, wholly disregarding the same, neglected and refused to answer said bill of interpleader, and that thereafter, on the 1st day of May, A. D. 1884, said court entered its decree in said cause adjudging that the said "Evan Randolph has no claim, right, title, or interest in or to the said 4,022 shares of the capital stock of said Quidnick Company," and "has no right, title, or interest in the said dividends declared thereon," and enjoined said Randolph from asserting any title or claim thereto and from commencing actions or suits to recover said dividend; that said defendants, Chafee and Pomroy, did duly appear and answer the said suit and were ordered to interplead therein, a sum sufficient to pay said dividend on said 4,022 shares being in the registry of said court; and said court, having jurisdictien over the same and over all parties to the cause, including this complainant, and over all questions involved therein, and having, by their said several answers, duly set forth their said claims of title to said 4,022 shares of stock, proceeded to take testimony in said cause in support of their said claims, and thereupon submitted their said claims to said supreme court; and that thereupon said court, after full hearing and consideration of the pleadings and testimony in said cause by its decree entered in said cause on the 2nd day of June, A. D. 1884, adjudged that this defendant, Chafee, by virtue of his title as pledges of said 4,022 shares of stock (being the same title hereinbefore set forth in this

answer), was " entitled as the lawful owner thereof " to receive the dividend declared thereon, and that said defendant Pomroy, assignee as aforesaid, held his said title as assignee subject to the title of said Chafee; and this respondent craves leave to submit as a part of his answer a certified copy of the record of said suit in equity, No. 2233, at the hearing of this cause.

And this respondent prays the same benefit and advantage of the aforegoing allegations and averments relative to said suit in equity, No. 2233, as if the same had been set up by way of plea in this cause.

And this respondent says that he is informed and believes, and upon information and belief avers and charges, that this cause was originally brought and is now being prosecuted in the name of said complainant, Evan Randolph, for the benefit of the said William Sprague and for the benefit of the said other Spragues hereinbefore mentioned or some of them and for the purpose and with the intent of enabling the said Spragues, in the event of the success of the cause, to defraud their said creditors of their rights to said shares of stock, and to hold said shares of stock for their own benefit.

72 And this respondent, further answering, says that the said Quidnick Company, acting as in duty bound upon the said decree of said supreme court in said cause in equity, No. 2233, hereinbefore recited, has, since the date thereof and before any process was served upon this respondent in said supplemental bill, paid over to this respondent said sum of money so deposited in the registry of said court as aforesaid and another stock dividend in liquidation, similarly declared by said company, relying upon the finality and conclusiveness of the said decree, amounting in all to the sum of 145 dollars per share upon said 4,022 shares of said stock and 55⅓ dollars per share, payable in the Sprague mortgage notes, so called, at their original face value; and this respondent, as in duty bound under his said trust, has received the same prior to any service of process upon him in said second supplemental bill as aforesaid, and has distributed the said sums of money so received to the said creditors under his said trusts.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material and necessary for this respondent to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied which is true, to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ZECHARIAH CHAFEE.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHAS. HART,
BENJ. F. THURSTON,
Solicitors and of Counsel for Z. Chafee.

UNITED STATES OF AMERICA, }
Rhode Island District, Providence, } *ss:*

In the city of Providence, on the 13th day of September, A. D. 1884, before me, a notary public, duly commissioned in and for the State of Rhode Island, personally appeared Zechariah Chafee,
73 subscriber to the foregoing answer, and made oath that the statements made in said answer as of his own knowledge are true, and those made therein as of his own information and belief he verily believes to be true, and that the plea therein embodied is not interposed for delay and is true in point of fact.

Witness my hand and official seal, at said Providence, in said district, the day and year aforesaid.

C. FRANK PARKHURST,
Notary Public.

This is to certify that, in our opinion, the plea embodied in the foregoing answer is well founded in point of law.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHAS. HART,
BENJ. F. THURSTON,
Solicitors and of Counsel for Z. Chafee.

EXHIBIT 1.

Wm. J. King, Esq., chairman, &c.:

We have given to the proposed deed of trust of the Sprague property to be executed by us as trustees the most careful consideration, with an earnest desire to see our way clear to accept the same; but, acting under the advice of counsel, we must decline to do so, unless creditors, by some previous action on their part, will protect us against personal liability.

Very respectfully,

RUFUS WATERMAN.
A. D. LOCKWOOD.
GEO. C. NIGHTINGALE.

Providence, Nov. 29, 1873.

EXHIBIT 2.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy four, by and between the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island and transacting business in the city of Providence, of the first part, and Zechariah Chafee, of said
74 Providence, of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Company is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating its estate and effects to and for the payment of the same:

Now, this indenture witnesseth that the said A. & W. Sprague

Manufacturing Company, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to it paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all our right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, and mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims of creditors against us, the A. & W. Sprague Manufacturing Company, which have been or shall within nine months of the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same under the provisions of said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interest of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust, from time to time, as soon as reasonably may be, consulting the best interest of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise ratably, the obligations to our creditors within a reasonable time; and the said trustee is further authorized to run said mills and printworks or either or any of them or to allow the grantor to run the same or any part thereof, if for the best interest of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid, and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof said A. & W. Sprague Manufacturing Company has caused these presents to be signed and its corporate seal to be hereto affixed by Amasa Sprague, its treasurer, for this purpose fully authorized, and said Zechariah Chafee has hereto set his hand and seal this sixth day of April, eighteen hundred and seventy-four.

A. & W. SPRAGUE M'F'G CO.,
Per AMASA SPRAGUE, *Tr.*
ZECHARIAH CHAFEE.

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

STATE OF RHODE ISLAND, ETC., } *ss:*
City and County of Providence, }

Be it known that in said city of Providence, this seventh day of April, A. D. 1874, before me, Charles Selden, a justice of the peace for the said city of Providence and a notary public for said State of Rhode Island, residing in said city of Providence, personally appeared Amasa Sprague, personally known to me to be the same person who executed the aforegoing instrument as treasurer, and in his capacity as treasurer acknowledged to me that he signed, sealed, executed, and delivered this said instrument as and that the same is his free and voluntary act and deed as such treasurer and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company for the uses and purposes therein mentioned and expressed.

76 In testimony whereof I have hereunto set my hand and official seal, at said city of Providence, on this said seventh day of April, A. D. 1874.

CHARLES SELDEN,
Justice of the Peace and Notary Public.

EXHIBIT 3.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague, of Cranston, county of Providence, State of Rhode Island, of the first part, and Zechariah Chafee, of Providence, county of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said Amasa Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said Amasa Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators,

and assigns, all his right, title, and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real and personal or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust; to sell the same at public or private sale and convert the same into money and the proceeds thereof to apply—

First, to the payment in full, if sufficient, otherwise ratably, of all the claims against the said Amasa Sprague provided for in said trust deed of mortgage of Nov. 1, 1873, which have been or shall within nine months from the first day of November, A. D.
77 1873, be brought in and extended for the term of time provided in said mortgage trust, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same, under the provisions of said deed of mortgage dated Nov. 1, 1873, or of this or any other preceding instrument.

Secondly, the residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other claims; and said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable; and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust, from time to time, as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works, or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him, or otherwise, he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof I have hereunto set my hand and seal this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

78 THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this seventh day of April, A. D. 1874, then Amasa Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—

[L. S.] CHARLES SELDEN,
Notary Public.

Recorded May 8, 1874, at 9.30 a. m.

Witness: G. A. WILLIAMSON,
Recorder of Deeds.

OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office in Book No. 248, page 311.

Attest: G. A. WILLIAMSON,
Recorder of Deeds.

EXHIBIT 4.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague, of Cranston, county of Providence and State of Rhode Island, and William Sprague, of South Kingston, county of Washington and State of Rhode Island, copartners as A. & W. Sprague, of the first part, and Zechariah Chafee, of the city of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said A. & W. Sprague are now indebted or under liability, primary or secondary, in divers sums of money to divers persons and are desirous of appropriating their estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W. Sprague, for and in consideration of the said debts and liabilities, and also
79 in consideration of the sum of one dollar to them paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all their right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantors and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust; to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First, to the payment in full, if sufficient, otherwise ratably, of all the claims against us (A. & W. Sprague) which have or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same, under the provisions of the said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly, the residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors, and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust, from time to time, as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to our creditors within a reasonable time.

And the said trustee is further authorized to run said mills and print works, or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interest of the creditors,
80 the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him, or otherwise, he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof we have hereunto set our hands and seals this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
WILLIAM SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this sixth day of April, A. D. 1874, then Amasa Sprague, William Sprague, and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—

[L. S.] CHARLES SELDEN,
Notary Public.

Recorded May 8, 1874, at 9.30 a. m.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

81 OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office, in Book No. 248, page 313.
Attest: G. A. WILLIAMSON,
Recorder of Deeds.

EXHIBIT 5.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-five, by and between William Sprague, of South Kingston, county of Washington, State of Rhode Island, of the first part, and Zechariah Chafee, of Providence, of the second part, witnesseth:

Whereas the said William Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said William Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all his right, title, and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from the attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale, and to convert the same into money, and the proceeds thereof to apply—

First, to the payment in full, if sufficient, otherwise ratably, of all the claims against the said William Sprague provided for
82 in said trust deed of mortgage of November 1, 1873, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time for part or the whole of the same, under the provisions of said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Second, the residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other creditors.

And said trustee is hereby authorized and empowered and it

shall be his duty to act faithfully for the interest of the creditors, and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust, from time to time, as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time.

And the said trustee is further authorized to run said mills and print works, or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be charged to the trust funds vested in him.

And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof I have hereunto set my hand and seal this sixth day of April, one thousand eight hundred and seventy-four.

WILLIAM SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

83 THE STATE OF RHODE ISLAND, } *ss:*
County of Providence, }

In Providence, this sixth day of April, A. D. 1874, then William Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—
[L. S.] CHARLES SELDEN,
Notary Public.

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, L. P. Williams, notary public for said district and county, do hereby certify that William Sprague, party to a certain deed bearing date on the sixth day of April, A. D. 1874, and hereto annexed, personally appeared before me in the county aforesaid, the said William Sprague being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 15th day of April, A. D. 1874.

[L. S.] L. P. WILLIAMS,
Notary Public.

Recorded May 11th, 1874, at 10.15 a. m.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office in Book No. 248, page 315.
Attest: G. A. WILLIAMSON,
Recorder of Deeds.

84 *Answer of Quidnick Co. et al.* (*Filed Sept.* 19, 1884.)

The joint and several answers of the Quidnick Company and Gorham P. Pomroy, Claudius B. Farnsworth, the Union Company, Stephen Harris, Charles B. Gould, Benjamin B. Knight, and Robert Knight, respondents to the above-entitled original, amended, and supplemental bill of complaint.

These respondents, severally reserving to themselves all benefit of exception to the many errors and insufficiencies in said bill of complaint contained, for answer thereto severally say—

That they are not informed, save by the said bill, whether the complainant, in the year 1873, was a creditor of the firm of Hoyt, Spragues & Company, as alleged in said bill of complaint, and therefore neither admit nor deny the same, but leave the said complainant to prove the same as he may be advised.

And these respondents, further answering, severally say that they admit and aver it to be true, as alleged in said bill, that the said respondent, Zechariah Chafee, did, on the first day of December, A. D. 1873, receive and accept said indenture bearing date November 1, 1873, whereof a copy is annexed to said bill of complaint, marked "Exhibit A," which said indenture these defendants severally aver was executed and delivered by said Amasa Sprague, William Sprague, Fanny Sprague, Mary Sprague, and the A. & W. Sprague Manufacturing Company and the firm of A. & W. Sprague to said Chafee, and these respondents severally deny the allegation of said amended bill "that the said indenture was not made or executed by the said William Sprague, Amasa Sprague, the A. & W. Sprague Manufacturing Company, Fanny Sprague, and Mary Sprague," and make the said indenture marked "Exhibit A" a part of this their answer.

These respondents, further answering, severally admit that prior to said first day of December, 1873, the said Amasa Sprague and William Sprague were each the owners of 1,082 shares of the capital stock of the said Quidnick Company.

That they are not informed, save by said bill, as to said suit at law of the said complainant against the surviving members of said firm of Hoyt, Spragues & Company, as alleged in said bill, or as to service and entry of the writ in said cause, or the issuing and service

of the writ of mesne process of attachment, or the service
85 thereof or the pretended attachment thereunder, or of the entry of judgment, issuing of execution, the levy and service of said execution, or the pretended sales thereunder, or the pretended purchase by the complainant at the said auction sales, or the making, execution, acknowledgments, and delivery of deeds, as alleged in said bill, and neither admit nor deny said allegations, but leave the complainant to prove the said several allegations as he may be advised.

That they are not informed, save by the said bill, whether said Horatio N. Waterman was, in the year 1873, a creditor of said A. & W. Sprague Manufacturing Company, as in said bill alleged, and neither admit nor deny said allegations, but leave the complainant to prove the same as he may be advised.

They admit that said Fanny Sprague and Mary Sprague were stockholders in the said A. & W. Sprague Manufacturing Company, as in said bill alleged, but they are not informed whether or not they were liable for said alleged debt claimed to be due to said Waterman, and leave the said complainant to make proof thereof as he may be advised.

They further admit that in the year 1873 the said A. & W. Sprague Manufacturing Company and the said Fanny Sprague and Mary Sprague were owners of capital stock in said Quidnick Company, said A. & W. Sprague Manufacturing Company owning 455 shares, said Fanny Sprague owning 802 shares, and said Mary Sprague owning 601 shares of said stock.

These respondents, further answering, severally say that they are not informed, save by said bill, whether said Waterman, as alleged in said bill, applied to said A. & W. Sprague Manufacturing Company for payment of said indebtedness, or whether said company admitted and acknowledged and promised to pay the same to him and to provide for the payment thereof or acknowledged the justice and validity thereof, but failed to pay the same, or whether said Waterman took the several proceedings in said bill set forth to enforce payment of his said claim, or whether the said complainant became the purchaser of the stock, as alleged in said bill, and received conveyances thereof, or whether said complainant left the said conveyances marked Complainant's Exhibits C, D, F, and G with said Quidnick Company and requested said company to record the same or demanded of said company a transfer of said stock and the issue of certificates thereof, as alleged in said bill, and neither admit nor deny the same, but leave the complainant to prove the same as he may be advised.

These respondents, further severally answering, say that the said
A. & W. Sprague Manufacturing Company, Amasa Sprague,
86 Fanny Sprague, Mary Sprague, and William Sprague, each in accordance with the said indenture marked Complainant's Exhibit "A," and upon the written request of the said Zechariah Chafee, on or about December 2, 1873, transferred to said Chafee all their shares of the capital stock of said Quidnick Company, by way of pledge and collateral security, to secure the performance of the

conditions of said indenture by transfers, respectively, made by each of them upon the stock transfer book of said Quidnick Company, copies of which transfers, marked Exhibits 1, 2, 3, 4, and 5, are hereto annexed and made part of their answer.

And these respondents, further answering, severally deny that the said Waterman never in any way assented to, agreed to, or ratified the said indenture marked Complainant's Exhibit A or any transfers, conveyances, or proceedings thereunder, but these respondents have been informed and believe and therefore aver it to be true that said Waterman, claiming to be a creditor of the said A. & W. Sprague Manufacturing Company, and through whom said complainant claims title to said stock, was present at the general meeting of the creditors of said A. & W. Sprague Manufacturing Company held in the city of Providence in the month of November, 1873, when the said trust mortgage marked Complainant's Exhibit A and the scheme of payment, settlement, and extension proposed to be carried out thereunder were presented to and approved by said creditors; that said Waterman took part in said meeting as such creditor, and did not then nor at any other time dissent therefrom or object or protest against the carrying out of said scheme, but did unite therein and assent thereto and at all times since down to the time of the commencement of the said suit at law in said bill recited, for the space of more than eight years, has acquiesced therein and assented thereto, and these respondents severally pray that they may have the same benefit and advantage of the said allegation and averment as if they had set the same up by way of demurrer or plea to said bill of complaint.

And these defendants, further answering, severally say that the said complainant has never, from the date of the execution of said indenture marked Complainant's Exhibit A, and from the time of the making of the said transfers of the capital stock of said Quidnick Company to said Chafee, as hereinbefore set forth, in pursuance of the provisions of said indenture, down to the time of the issuing of his said writ of mesne process of attachment in his suit aforesaid in said bill recited, to wit, for the space of more than eight years, taken any step to set aside or disaffirm said indenture, though, as these respondents aver, said complainant well knew the same
87 to have — made and executed as aforesaid, and that the same had been accepted by said Chafee, and that during all said time said Chafee had been openly acting thereunder and had openly claimed title thereunder to all said shares of said Quidnick stock; and these defendants aver that the said complainant is now by his own laches barred and estopped from attacking or attempting to invalidate the same and from maintaining his present bill, and the respondents severally pray that they may have the same benefit and advantage of the foregoing allegation and averment as if they set the same up by way of plea or demurrer to said bill of complaint.

And these respondents, further answering, severally deny that the said indenture marked complainant's Exhibit "A" and the said transfers of said capital stock of said Quidnick Company were and are as against said complainant and said Waterman null and void,

either by the general law or by the provisions of the General Statutes of Rhode Island, chapter 162, section —, or by the provisions of the public statutes of said State, chapter 173, section 1, and, on the contrary, they aver that said indenture and said transfers of said stock were made and executed in good faith, and were and are in all respects valid and binding in law upon the complainant.

And these respondents, further answering, severally admit and aver that subsequently to the making and execution and delivery of said indenture, Complainant's Exhibit "A," to wit, on or about December 24, 1873, the said A. & W. Sprague Manufacturing Company, the said Amasa Sprague, Mary Sprague, and William Sprague severally made upon the transfer book of said Quidnick Company transfers of all their right, title, and interest in the shares of stock in said Quidnick Company owned by them, respectively, to said Fanny Sprague, in trust for the equal benefit of their respective creditors, and that the said Fanny Sprague at the same time transferred upon said stock transfer book all her right, title, and interest in all the shares in said stock owned by her to said Mary Sprague, in trust for the equal benefit of the creditors of her, the said Fanny Sprague, copies of which transfers, marked 6, 7, 8, 9, and 10, are hereto annexed and made part of this their answer.

And these respondents, further answering, deny the allegation in said bill "that the transfer of said respective shares of said capital stock of the said Quidnick Company by the A. & W. Sprague Manufacturing Company, William Sprague, Amasa Sprague, and Mary Sprague to said Fanny Sprague, in trust as aforesaid, and by the said Fanny Sprague of her shares to said Mary Sprague as
88 aforesaid, was only a pretended transfer, and that said transfers were not made for the equal benefit of creditors, but to prevent attachments of said shares by their respective creditors and for the purpose of and with the intent to delay, hinder, and defraud creditors of their just and lawful actions, debts, suits, accounts, damages, and just demands, and for the purpose of keeping said shares of said stock in control of said Spragues and where they could not be reached by the creditors by ordinary legal process, and did deny that no title passed or could pass to the said Fanny and the said Mary Sprague as against the complainant by reason of said transfers; and, on the contrary, these respondents severally aver that the said several tranfers of said shares of said capital stock of said Quidnick Company to said Chafee, marked Exhibits 1, 2, 3, 4, and 5, and the said transfers to said Fanny Sprague and Mary Sprague, respectively, marked Exhibits 6, 7, 8, and 9 and 10, were severally made by the grantors named therein for the sole purpose of applying and appropriating all the property and estate, including said shares of the said grantors, to the equal benefit of all their respective creditors and for no other purpose whatever; and these respondents severally aver that by the said transfers marked Exhibits 6, 7, 8, 9, and 10 the whole title of said A. & W. Sprague Manufacturing Company, Amasa Sprague, Mary Sprague, and William Sprague to said shares of said capital stock passed to and vested in said Fanny Sprague, in trust for the equal benefit of the respective creditors of

said grantors, subject to the lawful claims of said respondent Chafee thereon, and that the entire title of said Fanny Sprague to said shares so conveyed by her to said Mary Sprague as aforesaid, by said transfer vested in said Mary Sprague, in trust as aforesaid for the equal benefit of the creditors of said Fanny Sprague, subject to the lawful claims of said respondent Chafee thereon.

And these respondents, further answering, say that they are not informed, save by said complainant's bill, whether said complainant caused his said execution to be levied as set forth in said bill or caused the said shares to be sold and became at such sale the purchaser thereof, or whether said Waterman caused his said execution to be levied, as set forth in said bill, and caused said shares to be sold, or whether said complainant became the purchaser at such sale, or whether said complainant received the several deeds of said shares set out in said bill, and therefore neither admit nor deny the said several allegations, but leave said complainant to prove the same as he may be advised.

But these defendants severally deny that by reason of any of the matters and things in said bill of complaint alleged the said
89 complainant became the owner of or acquired any interest whatever in the whole or any part of the said 4,022 shares of the capital stock of said Quidnick Company or became entitled to have the same transferred to him upon the books of said Quidnick Company, and to have a certificate therefor issued to him, but, on the contrary, they severally aver that if any such pretended levies of executions, sales, and purchases thereunder were ever made as in said bill alleged the same and each and every of the same were wholly without authority of law, irregular, and void, and conveyed no title or interest whatever in any of said shares of said stock to the complainant, for the reason that at the time of the said pretended levies and sales of said stock neither said A. & W. Sprague Manufacturing Company, Amasa Sprague, Fanny Sprague, Mary Sprague, and William Sprague or any of them had any right, title, or interest in any of said shares of said stock which was by law subject to attachment, levy, or sale.

These respondents, further answering, severally aver that on and prior to the said first day of November, A. D. 1873, the said A. & W. Sprague Manufacturing Company had become embarrassed in its business and — obliged to suspend payment of its debts; that it was then indebted to a very large number of banks and persons in and out of this State in very large amounts; that said Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague were then and since the organization of said A. & W. Sprague Manufacturing Company in the year 1865 had been large and the principal members and stockholders of said company, and as such, under said statutes in such cases provided, were and ever since have been and still are severally and individually liable for all its debts, said company never having made or filed any of the statements or returns required by said statute to exempt its members and stockholders from such personal liability; that said Amasa Sprague, William Sprague, Fanny Sprague, Mary Sprague, and said A. & W.

Sprague Manufacturing Company were also, on and before said first day of November, 1873, and thereafter to the times of the transfers by them hereinafter stated, large and the principal stockholders in the said Quidnick Company, together holding four thousand and twenty-two shares of the four thousand three hundred and forty-nine shares, the whole of the capital stock of said Quidnick Company now outstanding—the remaining three hundred and twenty-seven shares being held by the estate of Edwin Hoyt, deceased.

That in consequence of the embarrassments and suspension aforesaid of said A. & W. Sprague Manufacturing Company, it and its members and stockholders aforesaid were obliged to ask from
90 their creditors an extension of time for payment of its debts, and the negotiations with their creditors that ensued finally resulted in the said corporation and its said stockholders executing and delivering to the said respondent, Zechariah Chafee, the trust mortgage and conveyance of its and their estates, bearing date on said first day of November, A. D. 1873, a copy of which, marked Exhibit A, is annexed to the complainant's bill.

That said A. & W. Sprague Manufacturing Company and said other grantors or parties of the first part in said trust conveyance, being Complainant's Exhibit A, were at the date thereof respectively holders and owners of large amounts of the capital stock of various banks and other corporations, including said Quidnick Company, and also including sundry manufacturing corporations which were largely indebted or insolvent and in which the stockholders were also personally liable for the corporation debts under the statute aforesaid, so that under the advice of eminent counsel, both here and from the city of Boston, called in consultation by or in behalf of the creditors, that it was or might be doubtful how far the trustee, if he took a conveyance of all such stocks, might become also personally liable for such corporation debts, the clause was inserted in said conveyance, viz., "excepting from this conveyance all shares of capital stock in any and every corporation, wherever located, belonging to any or either of the parties of the first part," and inserting the following agreement and covenant, viz: "The same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security to secure the performance of the conditions of this instrument," as by reference hereby had to said conveyance will fully appear, thus enabling said Chafee, as trustee thereunder, at any time or from time to time, to call for the transfer to himself as trustee, and as security for the creditors under said trusts, of such stock as he should find sufficient value to justify his taking the same.

That accordingly, the next day after the delivery to him of said trust conveyance, said Chafee did call upon said parties of the first part, grantors therein, to transfer to him their shares aforesaid in said Quidnick Company, and said parties thereupon, on the second day of December, 1873, respectively made and executed to your orator upon the stock transfer book of said Quidnick Company transfers of the shares of stock in said company then held by them, respectively, in the following form, viz:

"For value received, I, —— ——, hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mort-
91 gage dated November 1, —, — shares of the capital stock of the Quidnick Company;" the said Amasa and William thus transferring to said Chafee each 1,082 shares, and the said Fanny Sprague 802 shares, and the said Mary Sprague 601 shares, and the said A. & W. Sprague Manufacturing Company 455 shares, thus together making the 4,022 shares aforesaid, and which are of the par value of one hundred dollars per share.

That to further protect the interests of said creditors in said shares and secure to said creditors the full benefit thereof said parties, on the twenty-second day of December, 1873, by transfers duly made and executed by them respectively upon said stock transfer book of said Quidnick Company, transferred and assigned their respective remaining right, title, and interest and equity of redemption in said shares so held by them respectively, as follows: The said Amasa Sprague, William Sprague, Mary Sprague, and the said A. & W. Sprague Manufacturing Company each transferred to the said Fanny Sprague their respective shares in trust for the equal benefit of all their respective creditors, and the said Fanny Sprague, in like manner, transferred her remaining right, title, and interest in her shares aforesaid to the said Mary Sprague in trust for the equal benefit of all her creditors; all which, by reference to said stock transfer book of said Quidnick Company, to which, for the transfers aforesaid, when produced in court, these respondents crave leave to refer as parts of this their answer, will fully appear.

And these respondents aver that to still further secure to their creditors the full benefit of all their estates the said A. &. W. Sprague Manufacturing Company, Amasa Sprague, William Sprague, and the said Amasa Sprague and William Sprague as copartners under the firm of A. & W. Sprague, on the sixth day of April, A. D. 1874, severally executed and delivered to the respondent, Zechariah Chafee, their respective deeds of general assignment of all their respective right, title, and interest in and to all the estates conveyed by their said prior deed dated November 1, 1873, and in and to all their respective other estates, real, personal, and mixed, of every name and nature, wherever situated, not exempt from attachment by law, in trust to sell the same and convert the same into money, and the proceeds thereof to apply, first, to the payment in full, if sufficient, otherwise ratably, of all the claims of creditors against said parties respectively provided for in said trust deed of mortgage of November 1, 1873, which had been or should be brought in and extended for the term provided in said trust mortgage, and, secondly, the residue of said proceeds to apply to the payment in full, if sufficient,
92 otherwise ratably, of all their respective other creditors, as by reference to said several deeds of assignment, copies of which marked, respectively, Exhibits 11, 12, 13, and 14, and to which these respondents refer as parts of this their answer, as if fully recited herein, will fully appear.

And these respondents, as to the allegations of said first supple-

mental bill of complaint, severally deny that the said Quidnick Company ever, by any proper lawful action or at any legal meeting or in any lawful way or manner whatever, recognized the title of said complainant to said 4,022 shares of said capital stock of said Quidnick Company or any part thereof, or has ever lawfully issued or could lawfully issue to said complainant any certificate therefor or for any part thereof; and these respondents, further answering, aver and charge that while the said proceedings in said several petitions in said bill set forth were pending in said supreme court, and while the orders and decrees of said court made therein were in full force, the said complainant and the said respondents, William Sprague, Amasa Sprague, Fanny Sprague, Mary Sprague, and the A. & W. Sprague Manufacturing Company, fraudulently conspiring together, with the intent and purpose of preventing said 4,022 shares of said stock so held by said Mary and Fanny Sprague as assignees as aforesaid from coming into the hands of said respondent Pomroy, assignee, or into the hands of said Chafee, and for the purpose of throwing a cloud upon his, said Pomroy's, and said Chafee's title thereto, and for the purpose of preventing the said decrees of said supreme court from being executed and carried into effect, and for the purpose of preventing said Pomroy and said Chafee from applying said stock and the proceeds thereof for the payment of the debts of said Sprague, secured by said trust mortgage and said assignments, caused this present suit to be commenced in this court and caused the said Fanny Sprague and Mary Sprague, assignees of said 4,022 shares of said stock, as aforesaid, while said orders were in full force and unexecuted, to transfer, by transfers made upon the stock transfer book of said Quidnick Company, the said 4,022 shares of said stock to the complainant in fraud of the rights of said respondent Pomroy, assignee, and said Chafee, in the premises and in contempt and violation of the said orders and decrees of said supreme court; and these respondents aver that no consideration was ever paid by said complainant for said pretended transfers to said Fanny Sprague, assignee, and Mary Sprague, assignee, or to either of them, and that said complainant received said pretended transfers from said Fanny Sprague and Mary Sprague with full knowledge that they had no authority to make said pretended transfers, and with the like fraudu-
93 lent purpose hereinbefore alleged, and with also the like fraudulent intent and purpose the said complainant and the said respondents, William Sprague, Amasa Sprague, Fanny Sprague, Mary Sprague, on or about August 6, 1883, fraudulently procured the said William Sprague, then claiming to be the president of said Quidnick Company, to issue to the complainant a pretended certificate, under the seal of said company, of said 4,022 shares of said stock in the following form:

No. 43.

Quidnick Company, Providence, R. I.

Capital, $500,000. Incorporated 1862. 5,000 shares, $100 each.

This is to certify that Evan Randolph, of Philadelphia, is the

owner at the date hereof of four thousand twenty-two shares of capital stock of the Quidnick Company, transferable only upon the books of the said company, at their office, in Providence, R. I.

WILLIAM SPRAGUE, *President.*

W. SPRAGUE, *Secretary.*

Providence, R. I., Aug. 6, 1883.

The said complainant and the said William Sprague, Amasa Sprague, Fanny Sprague, Mary Sprague, and the said A. & W. Sprague Manufacturing Company then well knowing that said William Sprague had no authority to make and issue said pretended certificate, and that the same was wholly void.

And these respondents aver that by the issuing of said certificate and by the said proceedings the said complainant acquired no right, title, or interest in said 4,022 shares of said stock or in any part thereof; that the said pretended certificate was issued without authority of said Quidnick Company and was issued by said William Sprague and received by said Randolph with full knowledge of the rights of said respondents, Pomroy and Chafee, in and to said 4,022 shares of said stock, and subject to their rights therein.

And these respondents further aver that at said meeting of the Quidnick Company, held in the city of Providence on the first day of September, A. D. 1883, by the unanimous vote of all the
94 stockholders of said Quidnick Company it was declared by said Quidnick Company that the pretended issue of the said certificate to said complainant for 4,022 shares of said stock was made without the authority of said company, and the same was declared to be void and of no effect.

And as to the allegations in said second supplemental bill of the complainant these respondents, answering, say that they admit and aver that at the said meeting of the stockholders of said Quidnick Company, holden on the first day of September, 1883, said respondent Pomroy, as the owner of said 4,022 shares of said stock, and said respondent Farnsworth, administrator, with the will annexed, of the estate of Edwin Hoyt, deceased, in the State of Rhode Island, claiming to hold 327 shares of said stock and to have the right to vote thereon, and being the owner and holder of all the outstanding shares of the stock of said Quidnick Company, were present, and did then vote to remove and did remove all officers claiming to be the officers of said company, and did then and there elect said respondents, Stephen Harris, president, and Charles B. Gould, secretary and treasurer of said company; and they aver that said Harris is now the lawfully elected president and the said Gould is now the lawfully elected secretary and treasurer of said company; and they further aver that said Pomroy, as assignee as aforesaid, and said Farnsworth had full and lawful authority as stockholders in said company to vote to declare the offices of said company vacant and to elect said Harris and Gould to their respective offices as aforesaid; and these respondents admit the several allegations in said second supplemental bill contained as to the appointment of said respondent Farnsworth by the decree of said supreme court of the State of

Rhode Island, entered September 10, 1881, to be custodian of all the estate of said Quidnick Cympany, and as to the possession of said estate by said respondent, William Sprague, the application by said Farnsworth to said court to obtain possession of said estate and the decree of the said supreme court thereon, and the compliance of said Sprague with the provisions of said decree, and the delivery to said Farnsworth, custodian, by said Sprague of said property of said Quidnick Company, to be true; and these respondents also aver that said Quidnick Company thereafter, to wit, on the 17th day of December, 1883, filed its written petition in said court in the said suit in equity, number 1932, then and now pending in said court as the said second supplemental bill alleged, and that said supreme court made the decree upon said petition substantially as in said bill set forth; but for greater certainty they refer to the record of the said proceedings now remaining in said supreme court.

95 And these respondents, further answering, deny that immediately upon the entry of the said decree of said supreme court, modifying its injunction against the sale of the property of said Quidnick Company, or at any other time or in any manner the said Harris and Gould and the said respondents, Farnsworth and Pomroy, owning all the stock of said company, and said Farnsworth as custodian as aforesaid, or any of them, combined and confederated together to sell the property of said Quidnick Company to the said respondent, The Union Company, or to any other person for less than its true value with the intent of defrauding the complainant or of injuring and impairing the value of the said shares of stock of the said Quidnick Company, claimed by him, or that in pursuance of said purpose said Harris advertised the sale of said property as set forth in said bill; and they further deny that said respondents, Harris, Gould, Pomroy, and Farnsworth, and the Union Company, or any of them, knew or had any reason to know or believe that by reason of the pendency of the said suits in said bill mentioned, touching the ownership of said stock and the various alleged claims upon the title to the property of said Quidnick Company, said property could not and would not be sold for anything near its true value and worth; but, on the contrary, these respondents severally aver that immediately upon the entry of said decree in said supreme court the said Quidnick Company, at a meeting of its stockholders, duly warned and held pursuant to the provisions of its charter and by-laws, on the — day of December, A. D. 1883, passed a vote, which was voted for by all its stockholders (to wit, said Pomroy and Farnsworth), directing the sale of all its mills and manufacturing property at public auction, in the city of Providence, on the tenth day of January, A. D. 1884, a copy of which vote is hereto annexed and made part hereof, marked Exhibit 25, and caused the said sale to be advertised extensively in public newspapers in the cities of Providence and New York, and on said tenth day of January, A. D. 1884, at said public action held in the city of Providence, which was largely attended by men of means and at which many bids were made, sold said property to said Union Company for the sum of ($260,000) two hundred and sixty thousand dollars, said Union Company being the highest bidder, which said

sum was thereafter, prior to the filing of said supplemental bill, paid to said Quidnick Company by said Union Company, and deeds thereof were duly made and delivered to said Union Company by said Quidnick Company; and these respondents further aver, *that* upon information and belief, that the complainant's said bill, original and supplemental, and his said suits were brought and are now maintained and prosecuted in the name of said complainant for and
96 in behalf of and in the interest solely of the said respondents, William Sprague, Amasa Sprague, Fanny Sprague, and Mary Sprague, or some of them, and for their sole benefit and interest, and for the purpose of enabling the said complainant, if said suit should be determined in his favor, to hold the said property of the Quidnick Company for the benefit of and in the interest of said William Sprague, Amasa Sprague, Fanny Sprague, and Mary Sprague, or some of them, and for the purpose of enabling said William, Amasa, Fanny, and Mary Sprague to thereby defraud their respective creditors.

And these respondents, further answering, aver that on or about the fifteenth day of March, A. D. 1884, and before the answer in this cause became due, the said respondent, The Quidnick Company, filed and duly entered in the supreme court of the State of Rhode Island its bill of interpleader in equity, numbered 2233 on the docket of said court, against the said complainant, Evan Randolph, and against the respondents, the said Gorham P. Pomroy and Zechariah Chafee, and against one Thomas C. Greene, receiver of the Franklin Institution for Savings, setting forth that said Quidnick Company had sold all its manufacturing property and its mills, and that it had discontinued its business of manufacturing, and had theretofore declared a dividend of twenty dollars per share out of the funds derived from said sales, payable to its lawful stockholders on demand, and that the said respondents, Chafee, Pomroy, Thomas C. Greene, receiver, and the said complainant, each claimed to be the owner of the whole or parts of said 4,022 shares of said capital stock of said Quidnick Company, and claimed as such owners the said dividend so declared thereon, and praying that the said respondents named in said bill might be decreed to set forth their several and respective titles to said stock and to said dividend so declared thereon, and that said respondents do interplead with each other concerning the same, so that said court might by its decree in said cause adjudge and determine in which of said respondents was vested the title to said 4,022 shares of said stock and the dividends declared thereon as aforesaid and to whom said Quidnick Company was by law obliged to pay said dividends; that thereupon subpœnas were duly issued by said court, which subpœnas were served upon the said complainant and said other respondents named in said bill by personal service thereof, and these respondents aver that said complainant, Evan Randolph, wholly disregarded the said subpœna and the requirements thereof, and wholly neglected and refused to obey the same, and neglected and refused to
97 make answer to said bill; and thereafter, on or about the first day of May, A. D. 1884, after the time had expired within

which by law said Randolph could answer said bill, said court made and entered its decree in said cause, adjudging that the said Evan Randolph, the complainant in this suit, had no claim, right, or interest in or to the said 4,022 shares of the capital stock of the said Quidnick Company, or any part thereof, and had no claim, right, title, and interest in the said dividends so declared thereon, or any part thereof, and also in and by said decree perpetually enjoined said complainant, Evan Randolph, from asserting any claim or title thereto, and from commencing any actions or suits against said Quidnick Company to recover said dividends; that the said respondents, Pomroy and Chafee, duly appeared and answered said bill, and by the decree of said court were ordered to interplead with each other relative to the controversy between them set forth in said bill; that said respondents by these several answers duly set forth their respective claims of title to said 4,022 shares of said stock and the dividends declared thereon as aforesaid, and testimony was duly submitted to said court concerning the said claims of said Pomroy and said Chafee to said stock and dividends; and thereupon said court, after a full hearing and consideration of the pleadings and testimony in said cause, on the second day of June, A. D. 1884, by its decree entered therein, ordered, adjudged, and decreed that the said respondent, Chafee, by virtue of his title as pledgee of said 4,022 shares of said stock, as set forth in the said transfers of said stock (marked Exhibits 1, 2, 3, 4, and 5, and made part of this answer, and being the same transfers set forth in the complainant's bill), was entitled as the lawful owner thereof to receive the said dividends declared thereon, and also by said decree declared that said respondent, Pomroy, as assignee, as set forth in said bill, held the title as assignee of said 4,022 shares of said stock, subject to the title of said Chafee to said stock; and these defendants hereto annex a certified copy of the record of said suit, No. 2233 in said supreme court, marked Exhibit 26, and make the same a part of this their answer, and submit as matter of law that the said record of said suit and the proceedings therein were and are an absolute bar to the relief sought by the complainant in his said bill as to said 4,022 shares of said stock and every part thereof, and pray the same benefit and advantage thereof as if they had formally pleaded the same in bar to the complainant's said bill of complaint.

And these respondents, further answering, deny that the said complainant is now the lawful holder and owner of the said cer-
98 tificate for 4,022 shares of the capital stock of said Quidnick Company, and deny that the same was ever lawfully issued or delivered to said complainant, or that the same was ever in the possession of said complainant; but, on the contrary, these defendants aver that the said certificate was wrongfully, illegally, and fraudulently issued by the said respondent, William Sprague, then claiming to be the president of said Quidnick Company, but without lawful authority of said company, and for the purpose of preventing said shares from being applied and appropriated for the payment of the creditors of said A. & W. Sprague Manufacturing Company and said William Sprague, Amasa Sprague, Mary Sprague, and Fanny

Sprague, and the further purpose of preventing the said shares from coming into the possession and control of the respondent, Pomroy, assignee, or any assignee, who might be appointed in the proceedings then pending in said supreme court, as in said bill set forth praying for the removal of said Mary Sprague and Fanny Sprague, assignees as aforesaid, by reason of their neglect and refusal to comply with the orders and decrees of said court in the said proceedings set forth in said bill, and to prevent the same from coming into the hands of said respondent, Chafee, as trustee as aforesaid.

And these respondents, further answering, admit and aver that by the proceedings in said supreme court that said respondent, Pomroy, was by the decree of said court appointed assignee of said 4,022 shares of said capital stock in place of said Mary Sprague and Fanny Sprague, removed from these [their] respective trusts as assignees of said shares by said court for the causes in said decree set forth; and they further aver that said Pomroy now claims to be, by virtue of said decree, *to be* the assignee of said A. & W. Sprague Manufacturing Company, Amasa Sprague, Mary and Fanny Sprague, and William Sprague of said 4,022 shares of said capital stock in trust for the equal benefit of all their respective creditors.

And these respondents, further answering, deny the allegations in said first supplemental bill contained, that the complainant was in no way a party to said proceedings in said bill mentioned, which resulted in the appointment of said Pomroy assignee, as aforesaid, and that he was never apprised of the pendency thereof; but, on the contrary, these respondents aver that, by the provisions of the law of said State of Rhode Island, the complainant and all creditors of said Spragues were parties to said proceedings in said supreme court and were bound by the orders, decrees, and judgments made in the said proceedings, and that the complainant's solicitor of record was present at the hearing in said supreme court which resulted in
99 the appointment of said Pomroy as assignee, as aforesaid, and took part in the said proceedings, and that notice of the pendency of said proceedings was given to all said creditors by public advertisement prior to said hearing; and they further aver that said supreme court had full, complete, absolute, and exclusive jurisdiction of all said proceedings, and that the said complainant was and is bound by the judgment of said court therein, and that this court is wholly without jurisdiction to make any orders or decrees in the premises, and they hereto annex copies of all said proceedings in said supreme court, marked Exhibits 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, and make the same part of this their answer.

And said respondents, Harris, Gould, Pomroy, Farnsworth, and said Union Company, wholly deny that they at any time or in any way, unlawfully or otherwise, combined to dispose of the property of said Quidnick Company to said Union Company for the purpose of depreciating the value of the stock in said Quidnick Company claimed by the complainant, or to prevent his selling the same for its full value, or to prevent him from receiving any dividends on his said stock, or to deprive him of any rights as a stockholder of

said Quidnick Company, or to divert the assets and property of said Quidnick Company from the legitimate use to an unlawful purpose; and the said Union Company and the said Benjamin B. Knight and Robert Knight deny that they have in any way combined to wrong the complainant or any of the stockholders of said Quidnick Company by complicating the title to the property of said Quidnick Company, or by placing its property out of its possession to impair and injure the lawful stockholders in said Quidnick Company, or to prevent them from receiving dividends or voting thereon; but, on the contrary, the said respondents severally aver that the said Union Company attended as a bidder at the said sale of the said Quidnick Company's property at public auction, and became the purchaser at said sale for its own interest solely and without any unlawful purpose or object whatever, and thereafter paid to said Quidnick Company the entire purchase-money bid therefor and received from said Quidnick Company deeds of said property so purchased; and they aver that by said sales and conveyances the said Union Company became and was and is the *bona fide* purchaser of the said property of the Quidnick Company for value; and these respondents admit that they have acted and propose hereafter to act upon the said decree rendered in said supreme court in said suit in equity, number 2233, hereinbefore set forth, at all times hereafter as though the same was final and conclusive upon the rights of the complainant in the distribution of dividends, the sale of stock in the Quidnick Company, and in the transfer of property be-
100 longing to said Quidnick Company and as to the ownership of said 4,022 shares of the capital stock of said Quidnick Company; and these respondents, further answering, say that prior to the service of any process upon them in the said second supplemental bill of the complainant the said Quidnick Company, relying upon the finality and conclusiveness of the said decree made by said supreme court in said suit in equity 2233, had paid to the respondent, Chafee, all dividends declared by said company upon said 4,022 shares, it being dividends of $125 per share in cash and $55⅓ per share payable in the Sprague extension paper, so called, in addition to the said dividend of $20 per share.

And these respondents severally deny that the said bill in equity, No. 2233, was filed in said supreme court for the purpose of obtaining a decree of said court to confirm and validate the titles of the various parties who had usurped the rights and privileges of said Quidnick Company (if any such there are), or of the complainant, or who have unlawful possession of the property of said Quidnick Company; but, on the contrary, these respondents severally aver that said bill was filed by said Quidnick Company for the purpose of protecting itself by the decrees of said court, in payment of the dividends so declared, from the divers parties who claimed to be entitled to receive the dividends on the same shares of said stock, and for no other purpose.

And these respondents severally deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged, without this, that there is any other matter, cause,

or thing in the said complainant's said bill of complaint contained material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of these respondents; all which matters and things these respondents are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

QUIDNICK COMPANY,
[L. S.] By CHARLES B. GOULD, *Secretary.*
GORHAM P. POMROY.
CLAUDIUS B. FARNSWORTH.

101 THE UNION COMPANY,
[L. S.] By CHARLES B. GOULD, *Secretary.*
STEPHEN HARRIS.
CHARLES B. GOULD.
BENJAMIN B. KNIGHT,
By his solicitor, CHARLES H. PARKHURST.
ROBERT KNIGHT.

CHARLES H. PARKHURST,
RATHBONE GARDNER,
Solicitors for Respondents.

STATE OF RHODE ISLAND, &C., } *sc:*
Providence, }

In Providence, in said county, this 16th day of September, A. D. 1884, personally appeared before me Gorham P. Pomroy, Stephen Harris, Claudius B. Farnsworth, Robert Knight, and Charles B. Gould and severally made oath that the foregoing demurrer interposed in the above answer was not interposed for the purpose of delay, and also that the matters set up in said answer by way of plea are true in point of fact and are not interposed for delay; and the said Charles B. Gould, at the same time and place, also made oath that the said demurrer of the said Quidnick Company and the said Union Company was not interposed for the purpose of delay, and that the said plea of the said Quidnick Company and the said Union Company is true in point of fact and is not interposed for delay.

RATHBONE GARDNER,
Notary Public.

The undersigned, counsel for the above-named respondents, hereby certify that the foregoing demurrer and plea incorporated in the answer of said respondents are, in our opinion, well founded in point of law.

CHARLES H. PARKHURST.
RATHBONE GARDNER.

102 EXHIBIT 1.

(Copy.)

Transfer No. 18.

For value received I, Fanny Sprague, hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1st, 1873, made by others and myself to him, eight hundred and two shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

FANNY SPRAGUE.

EXHIBIT 2.

(Copy.)

Transfer No. 19.

For value received I, Mary Sprague, hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1st, 1873, made by others and myself to him, six hundred and one shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

MARY SPRAGUE.

EXHIBIT 3.

(Copy.)

Transfer No. 20.

For value received I, Amasa Sprague, hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1st, 1873, made by others and myself to him, ten hundred eighty-two shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

AMASA SPRAGUE.

EXHIBIT 4.

(Copy.)

Transfer No. 21.

For value received I, William Sprague, by Amasa Sprague, his att'y, hereby transfer, by way of pledge and collateral security,
103 to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1st, 1873,

made by myself and others to him, ten hundred eighty-two shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

WILLIAM SPRAGUE,
By AMASA SPRAGUE, *His Att'y.*

EXHIBIT 5.

(Copy.)

Transfer No. 22.

For value received the A. & W. Sprague Man'f'g Co. hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage, dated November 1st, 1873, made by others and this company to him, four hundred fifty-five shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

A. & W. SPRAGUE M'F'G CO.,
By AMASA SPRAGUE, *Treas.*

EXHIBIT 6.

(Copy.)

Transfer No. 32.

For value received I, Amasa Sprague, hereby sell and transfer to Fanny Sprague, of Providence, all my right, title, and interest in and to ten hundred eighty-two shares of the capital stock of the Quidnick Company, in trust, for the equal benefit of all my creditors.

Dated this twenty-second day of December, A. D. 1873.

AMASA SPRAGUE.

EXHIBIT 7.

(Copy.)

Transfer No. 34.

For value received I, William Sprague, hereby sell and transfer to Fanny Sprague, of Providence, all my right, title, and in-
104 terest in and to ten hundred eighty-two shares of the capital stock of the Quidnick Company, in trust, for the equal benefit of all my creditors.

Dated this twenty-fourth day of December, A. D. 1873.

WM. SPRAGUE.

EXHIBIT 8.

(Copy.)

Transfer No. 31.

For value received I, Mary Sprague, hereby sell and transfer to Fanny Sprague, of Providence, all my right, title, and interest in and to six hundred and one shares of the capital stock of the Quidnick Company, in trust, for the equal benefit of all my creditors.

Dated this twenty-second day of December, A. D. 1873.

MARY SPRAGUE.

EXHIBIT 9.

(Copy.)

Transfer No. 33.

For value received the A. & W. Sprague M'f'g Co. hereby sell and transfer to Fanny Sprague, of Providence, all its rights, title, and interest in and to four hundred and fifty-five shares of the capital stock of the Quidnick Company, in trust, for the equal benefit of all its creditors.

Dated this twenty-second day of December, A. D. 1873.

A. & W. SPRAGUE M'F'G CO.,
By AMASA SPRAGUE, *Tr.*

EXHIBIT 10.

(Copy.)

Transfer No. 30.

For value received I, Fanny Sprague, hereby sell and transfer to Mary Sprague, of Providence, all my right, title, and interest in and to eight hundred and two shares of the capital stock of the Quidnick Company, in trust, for the equal benefit of all my creditors.

Dated this twenty-second day of December, A. D. 1873.

FANNY SPRAGUE.

105 EXHIBIT 11.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between the A. &. W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island, and transacting business in the city of Providence, of the first part, and Zechariah Chafee, of said Providence, of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Company is now

indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating its estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W. Sprague Manufacturing Company, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to it paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all our right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, and mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims of creditors against us, the A. & W. Sprague Manufacturing Company, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same under the provisions of said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

106 And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interest of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise ratably, the obligations to our creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interest of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust and doth, in consideration thereof, covenant that he will faith-

fully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full payment upon their said claims as he shall reasonably be able to do.

In testimony whereof said A. & W. Sprague Manufacturing Company has caused these presents to be signed and its corporate seal to be hereto affixed by Amasa Sprague, its treasurer, for this purpose fully authorized, and said Zechariah Chafee has hereto set his hand and seal this sixth day of April, eighteen hundred and seventy-four.

A. & W. SPRAGUE M'F'G CO.,
Per AMASA SPRAGUE, *Tr.*
ZECHARIAH CHAFEE.

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

STATE OF RHODE ISLAND, &c., } *ss:*
City and County of Providence, }

Be it known that in said city of Providence, this seventh day of April, A. D. 1874, before me, Charles Selden, a justice of the peace for the said city of Providence and a notary public for said State of Rhode Island, residing in said city of Providence, personally
107 appeared Amasa Sprague, personally known to me to be the same person who executed the aforegoing instrument as treasurer, and in his capacity as treasurer acknowledged to me that he signed, sealed, executed, and delivered this said instrument as and that the same is his free and voluntary act and deed as such treasurer and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company for the uses and purpose therein mentioned and expressed.

In testimony whereof I have hereunto set my hand and official seal, at said city of Providence, on this said seventh day of April, A. D. 1874.

CHARLES SELDEN,
Justice of the Peace and Notary Public.

EXHIBIT 12.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague, of Cranston, county of Providence, State of Rhode Island, of the first part, and Zechariah Chafee, of Providence, county of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said Amasa Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth that the said Amasa Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm

unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all his right, title, and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and
108 appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against the said Amasa Sprague provided for in said trust deed of mortgage of November 1st, 1873, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same, under the provisions of said deed of mortgage dated November 1st, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other claims; and said trustee is hereby authorized and empowered, and it shall be his duty, to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works or either or any of them, or to allow the grantor to run the same or any part thereof if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purpose aforesaid; and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth in consideration thereof covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

109 In testimony whereof I have hereunto set my hand and seal this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this seventh day of April, A. D. 1874, then Amasa Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—

[L. S.] CHARLES SELDEN,
Notary Public.

Recorded May 8, 1874, at 9.30 a. m.

Witness: G. A. WILLIAMSON,
Recorder of Deeds.

OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office, in book No. 248, page 311.

Attest: G. A. WILLIAMSON,
Recorder of Deeds.

EXHIBIT 13.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague,
110 of Cranston, county of Providence, and State of Rhode Island, and William Sprague, of South Kingston, county of Washington, and State of Rhode Island, copartners as A. & W. Sprague, of the first part, and Zechariah Chafee, of the city of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said A. & W. Sprague are now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and are desirous of appropriating their estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W. Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar, to them paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all their right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantors and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against us (A. & W. Sprague) which have or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same, under the provisions of the said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and
111 all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to our creditors within a reasonable time.

And the said trustee is further authorized to run said mills and print works or either or any of them or to allow the grantor to run the same or any part thereof if for the best interest of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof we have hereunto set our hands and seals this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
WILLIAM SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this sixth day of April, A. D. 1874, then Amasa Sprague, William Sprague, and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—
[L. S.] CHARLES SELDEN,
Notary Public.

112 Recorded May 8, 1874, at 9.30 a. m.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.
A true copy of record of this office in Book No. 248, page 313.
Attest: G. A. WILLIAMSON,
Recorder of Deeds.

EXHIBIT 14.

This indenture, made the sixth day of April, A. D. eighteen hundred and seventy-five, by and between William Sprague, of South Kingston, county of Washington, State of Rhode Island, of the first part, and Zechariah Chafee, of Providence, of the second part, witnesseth:

Whereas the said William Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth that the said William Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all his right, title, and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situated, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his
113 heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against the said William Sprague provided for in said trust deed of mortgage of November 1st, 1873, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time for a part or the whole of the same under the provisions of the said deed of mortgage dated November 1st, 1873, or this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors, and so

as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interest of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time.

And the said trustee is further authorized to run said mills and print works or either or any of them or to allow the grantor to run the same or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid, and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be charged to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

114 In testimony whereof I have hereunto set my hand and seal this sixth day of April, one thousand eight hundred and seventy-four.

WILLIAM SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, }
County of Providence, } *ss:*

In Providence, this sixth day of April, A. D. 1874, then William Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—
[L. S.]

CHARLES SELDEN,
Notary Public.

DISTRICT OF COLUMBIA, }
County of Washington, } *To wit:*

I, L. P. Williams, a notary public for said district and county, do hereby certify that William Sprague, party to a certain deed bearing date on the sixth day of April, A. D. 1874, and hereto annexed, personally appeared before me in the county aforesaid, the said William Sprague being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 15th day of April, A. D. 1874.

[L. S.] L. P. WILLIAMS,
Notary Public.

115 Recorded May 11th, 1874, at 10.15 a. m.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office, in Book No. 248, page 315.
Attest: G. A. WILLIAMSON,
Recorder of Deeds.

EXHIBIT 15.

Citation.

NATIONAL BANK OF COMMERCE *et al.*
v.
FANNY SPRAGUE, Assignee of William Sprague.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

You are hereby required to notify Fanny Sprague, of Providence, in said county, assignee of William Sprague, of the filing in our supreme court within and for said county of the petition of the National Bank of Commerce and others, representing that said William Sprague, on 22nd of December, 1873, assigned, transferred, and conveyed to her, said respondent, one thousand and eighty-two shares of the capital stock of the Quidnick Company, in trust for the equal benefit of the creditors of said William Sprague; that said Fanny Sprague, by reason of her great age and infirmity, is incapable of executing the trust, and has failed so to do, and has permitted said William Sprague to use the said stock and other assigned property for his own benefit; and praying the court to order said Fanny Sprague to render upon oath an inventory of the effects, estates, and credits conveyed as aforesaid to her by the said William Sprague, and to give bond, with sufficient surety, to the satisfaction of the court,
for the faithful performance of said trusts, and in case of her
116 neglect that she may be removed from said trust and some
suitable person be appointed in her place; and also to cite the said respondent to appear before our supreme court, now holden at Providence, within and for the county of Providence, on the 25th day of June, A. D. 1883, at 10 o'clock a. m., that she may then and there show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ, with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this 18th day of June, A. D. 1883.

CHARLES BLAKE, *Clerk.*

PROVIDENCE, *sc:*

PROVIDENCE, *June 18th*, 1883.

I have this day notified and cited the within-named respondent, Fanny Sprague, as commanded, by leaving a true and attested copy of this writ with her, in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	60
Travel	10
	$1 45

Petition of 1877. (*Filed June* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned, creditors of William Sprague, of South Kingston, in said State, petitioning, respectfully show:

First. That they are severally creditors of the said William Sprague, and that on or about the twenty-second day of December, A. D. 1873, said William, by a deed of assignment in writing, made and executed by him on the stock transfer book of the Quid-
117 nick Company, a corporation organized under the laws of said State of Rhode Island, assigned, transferred, and conveyed to Fanny Sprague, of Providence, in said county of Providence, one thousand and eighty-two shares of the capital stock of said Quidnick Company, in trust for the equal benefit of the creditors of him, the said William Sprague, and that the said Fanny Sprague accepted the trusts of said assignment, and the undersigned aver that, as creditors of said William Sprague, they are severally interested in said deed of assignment.

Second. The petitioners further aver that the value of said shares of said stock of said Quidnick Company so assigned as aforesaid by said William Sprague to said Fanny Sprague exceeds the sum of one hundred thousand dollars, and that the said Fanny Sprague, by reason of her great age and physical infirmity, is incapable of executing the trusts of said deed of assignment, and has, since the execution of said deed of assignment, wholly failed and neglected to execute the trusts thereof, and has authorized and permitted the said William Sprague to manage, use, and control said stock and other stock of said Quidnick Company held by her as assignee of Mary Sprague, Amasa Sprague, and the A. & W. Sprague Manufacturing Company, being a majority of the stock of said Quidnick

Company, for the sole use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and the said Fanny Sprague, and has permitted the said assignor, William Sprague, to control and manage the entire property and business of said Quidnick Company for his and her own personal use and benefit and for the use and benefit of said Amasa Sprague and Mary Sprague in violation of the trusts of said deed, and has wholly neglected to apply said stock so assigned her by said William Sprague or any part thereof or any earnings or income thereof for any of the purposes named in said deed of assignment, and has wholly neglected to render to the creditors of said William Sprague any account of said stock so assigned to her by said William Sprague as aforesaid, and they aver that said Fanny Sprague and said William Sprague are insolvent.

Wherefore the petitioners pray that the said Fanny Sprague may be by summary order directed and required to render, upon oath, to your honors an inventory of the effects, estates, and credits conveyed to her by the said William Sprague by the said deed of assignment, and to give bond, with sufficient sureties, to the satisfaction of your honors, for the faithful execution of the trusts of said deed of assignment, and in case of her neglect to render such inventory or to give such bond that she, the said Fanny Sprague, may be
118 removed from her office and trust as assignee as aforesaid and some suitable person or persons be thereupon appointed in her place as such assignee under said deed from said William Sprague.

GLOBE NATIONAL BANK,
By B. A. JACKSON, *President.*
NATIONAL BANK OF COMMERCE OF PROVIDENCE, R. I.,
By EDWARD A. GREENE, *President.*
PEOPLE'S SAVINGS BANK, IN PROVIDENCE,
By EDWARD A. GREENE, *President.*
W. J. KING & SON.
SECOND NATIONAL BANK OF PROVIDENCE, R. I.,
By WILLIAM W. PAINE, *Cashier.*
J. P. CAMPBELL.
WALDRON, WIGHTMAN & CO.
EVANS & SEAGRAVE.
B. W. EVANS.
B. B. & R. KNIGHT.
E. H. ROBINSON.
JOHN H. MASON & SON.
CRANSTON SAVINGS BANK,
ALEX. FARNUM, *Receiver.*
BANK OF AMERICA,
By A. C. TOURTELLOT, *Cash.*
HENRY W. GARDNER.
HIGGIN, LLOYD & CO.,
By JOHN M. O'ROUKE, *Att'y.*
THOMAS BOYD, JR.

LIME ROCK NATIONAL BANK,
J. W. ANGELL, *Cash.*
MERCHANTS' SAVINGS BANK,
J. W. ANGELL, *Treas.*
FRANCIS S. BROWNELL.
THE FOURTH NATIONAL BANK, N. Y.,
O. D. BALDWIN, *Pres't.*
THE LEATHER MANUFACTURERS' NATIONAL BANK OF N. Y.,
By D. L. HOLDEN, *Cash.*
CONTINENTAL NAT. B'K, N. Y.,
By EDW'D D. RANDOLPH, *P't.*
THE NATIONAL B'K OF THE REPUBLIC, N. Y.,
By H. W. FORD, *Pres'd't.*
MERCHANTS' EXCHANGE NATIONAL BANK OF THE CITY OF NEW YORK,
By WM. A. THOMSON, *Pres't.*
NATIONAL BROADWAY BANK,
By Z. A. PALMER, *Pres't.*
BANK OF THE MANHATTAN COMPANY,
WM. HENRY SMITH, *Pres't.*
METROPOLITAN NAT'L B'K, N. Y.,
GEO. I. SEVIE, JR., *P't.*
HOPKINS & POMROY.
NATIONAL BANK OF NORTH AMERICA,
C. E. JACKSON, *Cashier.*

C. H. PARKHURST,
R. GARDNER,
Solicitors for Petitioners.

119 PROVIDENCE, *sc:*

In the city of Providence, this 18th day of June, A. D. 1883, Henry W. Gardner, one of the subscribers to the foregoing petition, personally appeared before me and made oath that the statements in the foregoing petition contained, so far as the same are made upon his own knowledge, are true, and so far as made upon information and belief are true to the best of his knowledge, information, and belief.

CHARLES H. PARKHURST,
Notary Public.

Decree for Inventory and Bond. (*Filed July* 19, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

NATIONAL BANK OF COMMERCE *et al.*
v.
FANNY SPRAGUE, Assignee of William Sprague. } No. 1877.

Upon the foregoing petition, upon hearing, it is ordered, adjudged,

and decreed that Fanny Sprague, assignee of William Sprague of 1,082 shares of the capital stock of the Quidnick Company, within twenty (20) days from the date hereof render unto said court under oath an inventory of the effects, estates, and credits conveyed to her by said William Sprague by the assignment dated December 24, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of one hundred thousand dollars for the faithful performance of the trusts of said deed of assignment.

Entered as the decree of court, 75 day, M. T., 1883 (July 19, 1883).

By order:

HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

120 EXHIBIT 16.

NATIONAL BANK OF COMMERCE
v.
FANNY SPRAGUE, Assignee of Amasa Sprague.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence*, } *sc:*

[L. S.] To the sheriffs of our several counties or their deputies, Greeting:

You are hereby required to notify Fanny Sprague, of Providence, assignee of Amasa Sprague, of the filing in our supreme court, for the county of Providence, of the petition of the National Bank of Commerce, and others representing that they are creditors of said Amasa Sprague, who, on December 22d, 1873, made an assignment to Fanny Sprague of 1,082 shares of the capital stock of the Quidnick Company, in trust for the equal benefit of his creditors; that said Fanny Sprague, owing to her great age and infirmity, is incapable of executing the trusts of said assignment, and has wholly failed so to do, and has permitted her son, William Sprague, to manage and control said stock and other property assigned for the benefit of said William, Amasa, Mary, and Fanny Sprague, in violation of said trusts, and praying that said Fanny Sprague be required to render upon oath to this court an inventory of the property conveyed to her by said Amasa Sprague in trust aforesaid, and to give bond for the faithful performance of said trusts, and in case of neglect that she be removed and some suitable person or persons be appointed in her place, and also to cite the said respondent to appear before our supreme court, now holden at Providence, within and for the county of Providence, on the 25th day of June, A. D. 1883, at 10 o'clock a. m., that she may then and there show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this eighteenth day of June, A. D. 1883.

CHARLES RLAKE, *Clerk.*

121 PROVIDENCE, *sc:*

PROVIDENCE, *June 18th*, 1883.

I have this day notified and cited the within-named respondent, Fanny Sprague, as commanded, by leaving a true and attested copy of this writ with her in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	60
Travel	10
	$1 45

Petition of 1878. (*Filed June* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned, creditors of Amasa Sprague, of Cranston, in said county, petitioning, respectfully show—

First. That they are severally creditors of the said Amasa Sprague, and that on or about the twenty-second day of December, A. D. 1873, said Amasa Sprague, by a deed of assignment in writing made and executed by him on the stock transfer book of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, assigned, transferred, and conveyed to Fanny Sprague, of Providence, in said county, one thousand and eighty-two shares of the capital stock of said Quidnick Company, in trust for the equal benefit of all the creditors of him, the said Amasa Sprague, and the said Fanny Sprague accepted the trust of said deed of assignment, and the undersigned aver that as creditors of said Amasa Sprague they are severally interested in said deed of assignment.

Second. The petitioners further aver that the value of said shares of said stock of said Quidnick Company so assigned as aforesaid by the said Amasa Sprague to said Fanny Sprague exceeds the sum of one hundred thousand dollars, and that the said Fanny Sprague, by reason of her great age and physical infirmity, is incapable of executing the trusts of said deed of assignment, and has, since
122 the making of said deed, wholly failed and neglected to execute the trusts thereof, and has authorized and permitted her son, William Sprague, who, on or about said twenty-second day of December, A. D. 1873, by like deed of assignment, assigned to her ten hundred and eighty-two shares of said stock of said Quidnick Company, in trust for the equal benefit of all the creditors of him, the said William Sprague, to manage, use, and control said stock and other stock of said company held by her, by like deeds of assignment, as assignee of said William Sprague, Mary Sprague, and the A. & W. Sprague Manufacturing Company, being a majority of the

shares of stock of said Quidnick Company, for the sole use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and the said Fanny Sprague, and has permitted the said William Sprague to control and manage the entire property and business of said Quidnick Company for the use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague, in violation of the trusts of said deed, and has wholly neglected to apply said stock so assigned to her by said Amasa Sprague, or any part thereof, or any earnings or income thereof, for any of the purposes named in said deed of assignment, and has wholly neglected to render to the creditors of said Amasa Sprague any account of said stock so assigned to her by the said Amasa Sprague as aforesaid, and they aver that said Fanny Sprague is insolvent, and that said Amasa Sprague is insolvent.

Wherefore the petitioners pray that the said Fanny Sprague may be, by summary order, required to render upon oath to your honors an inventory of the effects, estates, and credits conveyed to her by the said Amasa Sprague by the said deed of assignment, and to give bond, with sufficient sureties to the satisfaction of your honors, for the faithful execution of the trusts of said deed of assignment, and in case of her neglect to render such inventory or to file such bond that she, the said Fanny Sprague, may be removed from her office and trust as assignee as aforesaid and some suitable person or persons be thereupon appointed in her place as such assignee under said deed from said Amasa Sprague.

NATIONAL BANK OF COMMERCE, OF PROVIDENCE, R. I.,
By EDWARD A. GREENE, *President.*
PEOPLE'S SAVINGS BANK, IN PROVIDENCE,
By EDWARD A. GREENE, *President.*
W. J. KING & SON.
WALDRON, WIGHTMAN & CO.
SECOND NATIONAL BANK OF PROVIDENCE, R. I.,
By WM. W. PAINE, *Cashier.*
123 J. P. CAMPBELL.
B. B. & R. KNIGHT.
EVANS & SEAGRAVE.
E. H. ROBINSON.
B. W. EVANS.
JOHN H. MASON & SON
CRANSTON SAVINGS BANK,
By ALEX. FARNUM, *Receiver.*
BANK OF AMERICA,
By A. C. TOURTELLOT, *Cashier.*
GLOBE NATIONAL BANK,
By B. A. JACKSON, *Pres't.*
HENRY W. GARDNER.
HIGGIN, LLOYD & CO.,
By JOHN M O'ROUKE, *Att'y.*
THOMAS BOYD, JR.
LIME ROCK NATIONAL BANK,

J. W. ANGELL, *Cash.*
MERCHANTS' SAVINGS BANK,
J. W. ANGELL, *Treas.*
F. S. BROWNELL.
THE FOURTH NATIONAL BANK, N. Y.,
O. D. BALDWIN, *Pres't.*
THE LEATHER MANUF. NATIONAL BANK, N. Y.,
By D. L. HOLDEN, *Cash.*
CONTINENTAL NAT. B'K, N. Y.,
By EDW'D D. RANDOLPH, *P't.*
THE NATIONAL B'K OF THE REPUBLIC, N. Y.,
By H. W. FORD, *Pres't.*
MERCHANTS' EXCHANGE NATIONAL BANK OF THE CITY OF NEW YORK,
By WM. A. THOMPSON *Pres't.*
NATIONAL BROADWAY BANK,
By L. A. PALMER, *Pres't.*
BANK OF THE MANHATTAN COMPANY,
WM. HENRY SMITH, *Pres't.*
METROPOLITAN NAT'L BANK, N. Y.,
GEO. I. SEVIE, *P't.*
HOPKINS & POMROY.
NATIONAL BANK OF NORTH AMERICA,
C. E. JACKSON, *Cashier.*

C. H. PARKHURST,
R. GARDNER,
Solicitors for Petitioners.

PROVIDENCE, *sc:*

In the city of Providence, in said county, this 18th day of June, A. D. 1883, Henry Gardner, one of the signers of the foregoing petition, personally appeared and made oath that the statements in said petition made upon his own knowledge are true, and so far as made upon information and belief are true to the best of his knowledge, information, and belief.

CHARLES H. PARKHURST,
Notary Public.

124 *Decree for Inventory and Bond.* (*Filed July* 19, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

NATIONAL BANK OF COMMERCE *et al.*
v.
FANNY SPRAGUE, Assignee of Amasa Sprague. } No. 1878.

Upon the foregoing petition, upon hearing, it is ordered, adjudged, and decreed that Fanny Sprague, assignee of Amasa Sprague of 1,082 shares of the capital stock of the Quidnick Company, within

twenty (20) days from the date hereof render unto said court, under oath, an inventor of the effects, estates, and credits conveyed to her by said Amasa Sprague by the assignment dated December 22, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of one hundred thousand dollars for the faithful performance of the trusts of said deed of assignment.

Entered as a decree of court, 75th day, M. T., 1883 (July 19, '83).

By order:

HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

EXHIBIT 17.

NATIONAL BANK OF COMMERCE
v.
FANNY SPRAGUE, Assignee of A. & W. Sprague M'f'g Co.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence*, *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

You are hereby required to notify Fanny Sprague, of Providence, assignee of the A. & W. Sprague Manufacturing Company, a corporation, of the filing in our supreme court, for the county of Providence, of the petition of the National Bank of Commerce and
125 others representing that on December 22d, 1873, said A. & W. Sprague Manufacturing Company assigned and conveyed to Fanny Sprague 455 shares of the capital stock of the Quidnick Company, in trust for the equal benefit of the creditors of said A. & W. Sprague Manufacturing Company; that said Fanny Sprague, by reason of her great age and infirmity, is incapable of executing the trusts of said assignment, and has wholly failed so to do, and has permitted her son, William Sprague, to use and control said stock and other assigned property for the use and benefit of himself and Amasa Sprague, Mary Sprague, and Fanny Sprague, in violation of the trusts in said deed of assignment, and praying that said Fanny Sprague be required to render, on oath, an inventory of the assigned property conveyed to her as aforesaid, and to give bond, with sufficient sureties to the satisfaction of the court, for the faithful performance of the trusts of said assignment, and in case of neglect so to do that she be removed and some suitable person be appointed in her place; and also to cite the said respondent to appear before our supreme court, now holden at Providence, within and for the county of Providence, on the 25th day of June, A. D. 1883, at 10 o'clock a. m., that she may then and there show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this eighteenth day of June, A. D. 1883.

CHARLES BLAKE, *Clerk.*

PROVIDENCE, *sc*:

PROVIDENCE, *June 18th*, 1883.

I have this day notified and cited the within-named respondent, Fanny Sprague, as commanded, by leaving a true and attested copy of this writ with her, in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	60
Travel	10
	$1 45

126 *Petition No.* 1879. (*Filed June* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, A. D. 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned, creditors of the A. & W. Sprague Manufacturing Company, a corporation organized under the laws of the State of Rhode Island, respectfully show—

First. That they are severally creditors of the said A. & W. Sprague Manufacturing Company, a corporation organized under the laws of said State of Rhode Island, and that on or about the twenty-second day of December, 1873, said A. & W. Sprague Manufacturing Company, by its written deed of assignment made and executed by said corporation on the stock transfer book of the Quidnick Company, a corporation organized under the laws of said State, assigned, transferred, and conveyed to Fanny Sprague, of Providence, in said county, four hundred and fifty-five shares of the capital stock of the said Quidnick Company, in trust for the equal benefit of all the creditors of the said A. & W. Sprague Manufacturing Company, and the said Fanny Sprague accepted the trusts of said deed of assignment, and the undersigned aver that as creditors of the said A. & W. Sprague Manufacturing Company they are severally interested in said deed of assignment.

Second. The petitioners further aver that the value of said shares of said stock of said Quidnick Company so assigned as aforesaid to said Fanny Sprague by said A. & W. Sprague Manufacturing Company exceeds the sum of fifty thousand dollars, and that the said Fanny Sprague, by reason of her great age and physical infirmity, is incapable of executing the trusts of said deed of assignment, and has, since the making thereof, wholly failed and neglected to execute the trusts thereof, and has authorized and permitted her son, William Sprague, who, on or about said twenty-second day of December,

A. D. 1873, by a like deed of assignment, assigned to her ten hundred and eighty-two shares of the capital stock of said Quidnick Company, in trust for the equal benefit of the creditors of him, the said William Sprague, to manage and control said stock and other stock of said Quidnick Company held by her as assignee of said William Sprague, Amasa Sprague, and Mary Sprague, being a majority of the stock of said Quidnick Company, for the sole use and benefit of the said
William Sprague, Amasa Sprague, and Mary Sprague, being a
127 majority of the stock of said Quidnick Company, for the sole use
and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague, and has permitted the said William Sprague to control and manage the entire property and business of said Quidnick Company for the use and benefit of said William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague, in violation of the trusts of said deed of assignment, and has wholly neglected to apply said stock so assigned to her by said A. & W. Sprague Manufacturing Company, or any part thereof, or any earnings or income thereof, for any of the purposes named in the said deed of assignment, and has wholly neglected to render to the creditors of said A. & W. Sprague Manufacturing Company any account of said stock so assigned to her by the said A. & W. Sprague Manufacturing Company as aforesaid, and they aver that the said Fanny Sprague is insolvent, and that said A. & W. Sprague Manufacturing Company is insolvent.

Wherefore the petitioners pray that the said Fanny Sprague may be by summary order required to render to your honors, upon oath, an inventory of the effects, estates, and credits conveyed to her by the said A. & W. Sprague Manufacturing Company by the said deed of assignment, and to give bond, with sufficient sureties to the satisfaction of your honors, for the faithful execution of the trusts of said deed of assignment, and in case of her neglect to render such inventory or to give such bond that she, the said Fanny Sprague, may be removed from her office and trust as assignee as aforesaid, and some suitable person or persons be thereupon appointed in her place as such assignee under said deed from said A. & W. Sprague Manufacturing Company.

NATIONAL BANK OF COMMERCE OF PROV., R. I.,
By EDWARD A. GREENE, *President.*
PEOPLE'S SAVINGS BANK, IN PROVIDENCE,
By EDWARD A. GREENE, *President.*
W. J. KING & SONS.
SECOND NATIONAL BANK OF PROVIDENCE, R. I.,
By W. W. PAINE, *Cashier.*
J. P. CAMPBELL.
EVANS & SEAGRAVES.
B. B. & R. KNIGHT.
JOHN H. MASON & SON.
WALDRON, WIGHTMAN & CO.
B. W. EVANS.
E. H. ROBINSON.
CRANSTON SAVINGS BANK,

ALEX. FARNUM, *Receiver.*
BANK OF AMERICA,
By A. C. TOURTELLOT, *Cashier.*
GLOBE NATIONAL BANK,
By B. A. JACKSON, *Pres't.*
128 HENRY W. GARDNER.
HIGGIN, LLOYD & CO.,
By JOHN M. O'ROURKE, *Att'y.*
THOMAS BOYD, JR.
LIME ROCK NATIONAL BANK,
J. W. ANGELL, *Cash.*
MERCHANTS' SAVINGS BANK,
J. W. ANGELL, *Treas.*
FRANCIS S. BROWNELL.
THE FOURTH NATIONAL BANK N. Y.,
O. D. BALDWIN, *Pres't.*
THE LEATHER MANUFACTURERS' NATIONAL BANK OF N. Y.,
By D. L. HOLDEN, *Cash.*
CONTINENTAL NAT. B'K N. Y.,
By EDW'D D. RANDOLPH, *P't.*
THE NAT'L B'K OF THE REPUBLIC, N. Y.,
By H. W. FORD, *Pres'd't.*
MERCHANTS' EXCHANGE NAT'L BANK OF THE CITY OF NEW YORK,
By WM. A. THOMSON, *Pres't.*
NATIONAL BROADWAY BANK,
By Z. A. PALMER, *Pres't.*
BANK OF THE MANHATTAN COMPANY,
WM. HENRY SMITH, *Pres't.*
METROPOLITAN NAT'L B'K, N. Y.,
GEO. I. SEVIE, JR., *Pres't.*
HOPKINS & POMROY.
NATIONAL BANK OF NORTH AMERICA,
C. E. JACKSON, *Cashier.*

C. H. PARKHURST,
R. GARDNER,
Solicitors for Petitioners.

PROVIDENCE, *sc:*

In the city of Providence, this 18th day of June, A. D. 1883, Henry W. Gardner, one of the signers of the foregoing petition, personally appeared before me and made oath that the statements in the foregoing petition contained are true so far as the same are made upon his own knowledge, and so far as made upon information and belief are true to the best of his knowledge, information, and belief.

CHARLES H. PARKHURST,
Notary Public.

129 *Decree for Inventory and Bond.* (*Filed July* 19, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

NATIONAL BANK OF COMMERCE *et al.*
v.
FANNY SPRAGUE, Assignee of A. & W. Sprague M'f'g Co. } No. 1879.

Upon the foregoing petition, upon hearing, it is ordered, adjudged, and decreed that Fanny Sprague, assignee of A. & W. Sprague Manufacturing Company of 455 shares of the capital stock of the Quidnick Company, within twenty (20) days from the date hereof, render unto said court, under oath, an inventory of the effects, estates, and credits conveyed to her by said A. & W. Sprague Manufacturing Company by the assignment dated December 22, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of forty thousand dollars for the faithful performance of the trusts of said deed of assignment.

Entered as decree of court, 75th day, M. T., 1883 (July 19, 1883).

By order:

HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

EXHIBIT 18.

Citation.

SECOND NATIONAL BANK
v.
FANNY SPRAGUE, Assignee of Mary Sprague.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

You are hereby required to notify Fanny Sprague, of Providence, assignee of Mary Sprague, of the filing in the office of the clerk of the supreme court for the county of Providence of the petition of Second National Bank and others representing that said Mary Sprague, on the 22nd of December, 1873, assigned to said respond-
130 ent 601 shares of the capital stock of the Quidnick Company, in trust for the benefit of her creditors; that said Fanny Sprague, by reason of her great age and infirmity, is incapable of executing the trust, and has failed so to do, and has permitted her son, William Sprague, to use the said stock and other assigned prop-

erty for his own benefit, and praying that said Fanny Sprague be required to render, upon oath, an inventory of the effects, estates, and credits conveyed as aforesaid to her, and to give bond, with sufficient sureties to the satisfaction of the court, for the faithful performance of said trusts, and in case of her neglect that she may be removed from said trust and some suitable person be appointed in her place; and also to cite the said respondent to appear before our supreme court, now holden at Providence, within and for the county of Providence, on the 25th day of June, A. D. 1883, at 10 o'clock a. m., that she may then and there show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this eighteenth day of June, A. D. 1883.

CHARLES BLAKE, *Clerk.*

PROVIDENCE, *sc:*

PROVIDENCE, *June 18th*, 1883.

I have this day notified and cited the within-named respondent, Fanny Sprague, as commanded, by leaving a true and attested copy of this writ with her, in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	60
Travel	10
	$1 45

131 *Petition No.* 1880. (*Filed June* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, A. D. 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned, creditors of Mary Sprague, of Providence, in said county, respectfully show—

First. That they are severally creditors of the said Mary Sprague, and that on or about the twenty-second day of December, A. D. 1873, said Mary Sprague, by her deed of assignment in writing made and executed by her upon the stock transfer book of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, assigned, transferred, and conveyed to Fanny Sprague, of said Providence, six hundred and one shares of the capital stock of said Quidnick Company, in trust for the equal benefit of all the creditors of her, the said Mary Sprague, and the said Fanny Sprague accepted the trusts of said deed of assignment, and the undersigned aver that as creditors of the said Mary Sprague they are severally interested in said deed of assignment.

Second. The petitioners further aver that the value of said shares of said stock of said Quidnick Company so assigned as aforesaid by the said Mary Sprague to the said Fanny Sprague exceeds the sum of sixty thousand dollars, and that the said Fanny Sprague, by reason of her great age and physical infirmity, is incapable of executing the trusts of said deed of assignment, and has, since the making thereof, wholly failed and neglected to execute the trusts thereof, and has authorized and permitted her son, William Sprague, who, on or about said twenty-second day of December, A. D. 1873, by a like deed of assignment, assigned to said Fanny Sprague one thousand and eighty-two shares of said stock of said Quidnick Company, in trust for the equal benefit of all the creditors of him, the said William Sprague, to manage, use, and control said stock and other stocks of said Quidnick Company held by said Fanny Sprague as assignee by like deeds of assignment of Amasa Sprague, William Sprague, and the A. & W. Sprague Manufacturing Company, being a majority of the shares of stock of said Quidnick Company, for the sole use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and the said Fanny Sprague, and has permitted the said
William Sprague to control and manage the entire property
132 and business of said Quidnick Company for the sole use and
benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and the said Fanny Sprague in violation of the trusts of said deed, and has wholly neglected to apply said stock so assigned to her, the said Fanny Sprague, by the said Mary Sprague, or any part thereof or any earnings or income thereof, for any of the purposes named in said deed of assignment, and has wholly neglected to render to the creditors of said Mary Sprague any account of said stock so assigned to her by said Mary Sprague as aforesaid, and they aver that said Mary Sprague and said Fanny Sprague are insolvent.

Wherefore the petitioners pray that the said Fanny Sprague may by summary order be required to render upon oath to your honors an inventory of the effects, estates, and credits conveyed to her by the said Mary Sprague by the said deed of assignment, and to give bond, with sufficient sureties to the satisfaction of your honors, for the faithful execution of the trusts of the said deed of assignment, and in case of her neglect to render such inventory or to give such bond that she, the said Fanny Sprague, may be removed from her office and trust as assignee as aforesaid, and some suitable person or persons be thereupon appointed in her place as such assignee under said deed from said Mary Sprague.

SECOND NAT. BANK, PROVIDENCE, R. I.,
WM. W. PAINE, *Cashier.*
GLOBE NATIONAL BANK,
By B. A. JACKSON, *President.*
NATIONAL BANK OF COMMERCE OF PROVIDENCE, R. I.,
By EDWARD A. GREENE, *President.*
PEOPLE'S SAVINGS BANK, IN PROVIDENCE,
By EDWARD A. GREENE, *President.*
W. J. KING & SON.

J. P. CAMPBELL.
WALDRON, WIGHTMAN & CO.
EVANS & SEAGRAVE.
B. W. EVANS.
B. B. & R. KNIGHT.
E. H. ROBINSON.
JOHN H. MASON & SON.
CRANSTON SAVINGS BANK,
By ALEX. FARNUM, *Receiver.*
BANK OF AMERICA,
By A. C. TOURTELLOT, *Cash.*
HENRY W. GARDNER.
HIGGIN, LLOYD & CO.,
By JOHN M. O'ROURKE, *Att'y.*
THOMAS BOYD, JR.
LIME ROCK NATIONAL BANK,
J. W. ANGELL, *Cash.*
MERCHANTS' SAVINGS BANK,
J. W. ANGELL, *Treas.*
F. S. BROWNELL.
THE FOURTH NATIONAL BANK, N. Y.,
O. D. BALDWIN, *Pres't.*
133 THE LEATHER MANUFACT'RS' NAT. BANK OF N. Y.,
By D. L. HOLDEN, *Cash.*
CONTINENTAL NAT. B'K, N. Y.,
By EDW'D D. RANDOLPH, *P't.*
THE NAT'L B'K OF THE REPUBLIC, N. Y.,
By H. W. FORD, *Pres'd't.*
MERCHANTS' EXCHANGE NAT'L BANK OF THE CITY OF NEW YORK,
By WM. A. THOMSON, *Pres't.*
NATIONAL BROADWAY BANK,
By Z. A. PALMER, *Pres't.*
BANK OF THE MANHATTAN COMPANY,
WM. HENRY SMITH, *Pres't.*
METROPOLITAN NATIONAL BANK, N. Y.,
GEO. I. SEVIE, JR., *Pr't.*
HOPKINS & POMROY.
NATIONAL BANK OF NORTH AMERICA,
C. E. JACKSON, *Cashier.*

C. H. PARKHURST,
R. GARDNER,
Solicitors for Petitioners.

PROVIDENCE, *sc:*

In the city of Providence, this 18th day of June, A. D. 1883, Henry W. Gardner, one of the signers of the foregoing petition, personally appeared before me and made oath that the statements in said petition contained made upon his own knowledge are true, and so far as

made upon information and belief are true to the best of his knowledge, information, and belief.

CHARLES H. PARKHURST,
Notary Public.

Decree for Inventory and Bond. (*Filed July 19th*, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

SECOND NATIONAL BANK *et al.*
v.
FANNY SPRAGUE, Assignee of Mary Sprague. } No. 1880.

Upon the foregoing petition, upon hearing, it is ordered, adjudged, and decreed that Fanny Sprague, assignee of Mary Sprague
134 of 601 shares of the capital stock of the Quidnick Company, within twenty (20) days from the date hereof, render unto said court, under oath, an inventory of the effects, estates, and credits conveyed to her by said Mary Sprague by the assignment dated December 22, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of sixty thousand dollars for the faithful performance of the trusts of said deed of assignment.

Entered as decree of court, 75th day, M. T., 1883 (July 19 1883).
By order:

HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest:

CHARLES BLAKE, *Clerk.*

EXHIBIT 19.

Citation.

GLOBE NATIONAL BANK
v.
MARY SPRAGUE, Assignee of Fanny Sprague.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

You are hereby required to notify Mary Sprague, assignee of Fanny Sprague, both of Providence, of the filing in our supreme court for the county of Providence of the petition of the Globe National Bank and others representing that on the 22d day of December, A. D. 1873, Fanny Sprague assigned, transferred, and conveyed to the respondent 802 shares of the capital stock of the Quidnick

Company, in trust for the equal benefit of all the creditors of said Fanny Sprague, and the said Mary accepted the trusts of said deed of assignment; that the property assigned exceeds the sum of $80,000, and that said Mary Sprague is, by reason of her great age and physical infirmity, incapable of executing the trust, and has failed so to do, and has permitted William Sprague to use the said stock and other assigned property for his own benefit; and praying that said Mary Sprague be ordered to render, upon oath, an inventory of the effects, estates, and credits conveyed by said deed of assign-
135 ment to her by said Fanny Sprague, and to give bond, with sufficient sureties to the satisfaction of the court, for the faithful performance of said trusts, and in case of her neglect that she may be removed from said trust, and some suitable person be appointed in her place, and also to cite the said respondent to appear before our supreme court, now holden at Providence, within and for the county of Providence, on the 25th day of June, A. D. 1883, at 10 o'clock a. m., that she may then and there show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this 18th day of June, A. D. 1883.

CHARLES BLAKE, *Clerk.*

PROVIDENCE, *sc:*

PROVIDENCE, *June 18th*, 1883.

I have this day notified and cited the within-named respondent, Mary Sprague, as commanded, by leaving a true and attested copy of this writ with her, in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	60
Travel	10
	$1 45

Petition No. 1881. (*Filed June* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, A. D. 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned, creditors of Fanny Sprague, of Prvidence, in said county, respectfully show—

First. That they are severally creditors of the said Fanny Sprague, and that on or about the twenty-second day of December, A.
136 D. 1873, the said Fanny Sprague, by her deed of assignment in writing made and executed by her upon the stock transfer

book of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, assigned, transferred, and conveyed to Mary Sprague, of said Providence, 802 shares of the capital stock of said Quidnick Company, in trust for the equal benefit of all the creditors of her, the said Fanny Sprague, and the said Mary Sprague accepted the trusts of said deed of assignment, and the undersigned avers that as creditors of said Fanny Sprague they are severally interested in said deed of assignment.

Second. The petitioners further aver that the value of said shares of said stock of said Quidnick Company so assigned as aforesaid by the said Fanny Sprague to the said Mary Sprague exceeds the sum of eighty thousand dollars, and that the said Mary Sprague, by reason of her great age and physical infirmity, is incapable of executing the trusts of the said deed of assignment, and has, since the making thereof, wholly failed and neglected to execute the trusts thereof, and has authorized and permitted her nephew, William Sprague, who, on or about said twenty-second day of December, A. D. 1873, by a like deed of assignment, assigned to his mother, said Fanny Sprague, 1,082 shares of said stock of said Quidnick Company, in trust for the equal benefit of all the creditors of him, the said William Sprague, to manage, use, and control said stock for the sole use and benefit of the said William Sprague and the said Fanny Sprague and the said Mary Sprague, and has permitted the said William Sprague to use, control, and manage the entire property and business of the said Quidnick Company for the sole use and benefit of him, the said William Sprague, and the said Fanny Sprague and Mary Sprague, in violation of the trusts of said deed of assignment, and has wholly neglected to apply said stock so assigned to her by the said Fanny Sprague, or any part thereof or any of the earnings or income thereof, for any of the purposes named in said deed of assignment, and has wholly neglected to render to the creditors of said Fanny Sprague any account of said stock so assigned to her by the said Fanny Sprague as aforesaid, and they aver that said Fanny Sprague and said Mary Sprague are insolvent.

Wherefore the petitioners pray that the said Mary Sprague may, by summary order, be required to render upon oath to your honors an inventory of the effects, estates, and credits conveyed to her by the said Fanny Sprague by the said deed of assignment, and to give bond, with sufficient sureties to the satisfaction of your honors, for the faithful execution of the trusts of the said deed of assignment,
137 and in case of her neglect to render such inventory or to give such bond that she, the said Mary Sprague, may be removed from her office and trust as assignee as aforesaid, and some suitable person or persons be thereupon appointed as such assignee under said deed from said Fanny Sprague.

GLOBE NATIONAL BANK,
By B. A. JACKSON, *President.*
NATIONAL BANK OF COMMERCE OF PROVIDENCE, R. I.,
By EDWARD A. GREENE, *President.*

PEOPLE'S SAVINGS BANK, IN PROVIDENCE,
By EDWARD A. GREENE, *President.*
W. J. KING & SON.
SECOND NATIONAL BANK OF PROVIDENCE, R. I.,
By WILLIAM W. PAINE, *Cashier.*
J. P. CAMPBELL.
EVANS & SEAGRAVES.
B. B. & R. KNIGHT.
JOHN H. MASON & SON.
WALDRON, WIGHTMAN & CO.
B. W. EVANS.
E. H. ROBINSON.
CRANSTON SAVINGS BANK,
ALEX. FARNUM, *Receiver.*
BANK OF AMERICA,
By A. C. TOURTELLOT, *Cash.*
HENRY W. GARDNER.
HIGGIN, LLOYD & CO.,
By JOHN M. O'ROUKE, *Att'y.*
THOMAS BOYD, JR.
LIME ROCK NATIONAL BANK,
J. W. ANGELL, *Cash.*
MERCHANTS' SAVINGS BANK,
J. W. ANGELL, *Treas.*
F. S. BROWNELL.
THE FOURTH NATIONAL BANK, N. Y.,
O. D. BALDWIN, *Pres't.*
THE LEATHER MANUFACTURERS' NATIONAL BANK OF N. Y.,
By D. L. HOLDEN, *Cash.*
CONT'L NAT'L BANK, N. Y.,
By EDWARD D. RANDOLPH, *P't.*
THE NAT'L B'K OF THE REPUBLIC, N. Y.,
By H. W. FORD, *Pres't.*
MERCHANTS' EXCHANGE NAT'L BANK OF THE CITY OF NEW YORK,
By WM. A. THOMSON, *Pres't.*
NATIONAL BROADWAY BANK,
By Z. A. PALMER, *Pres't.*
BANK OF THE MANHATTAN COMPANY,
WM. HENRY SMITH, *Pres't.*
METROPOLITAN NAT'L B'K., N. Y.,
GEO. I. SEVIE, JR., *P't.*
HOPKINS & POMROY.
NATIONAL BANK OF NORTH AMERICA,
C. E. JACKSON, *Cashier.*

C. H. PARKHURST,
R. GARDNER,
Solicitors for Petitioners.

138 PROVIDENCE, *sc:*

In the city of Providence, this 18th day of June, A. D. 1883, Henry W. Gardner, one of the signers of the foregoing petition, personally appeared before me and made oath that the statements in the foregoing petition, so far as made upon his own knowledge, are true, and as far as made upon information and belief are true to the best of his knowledge, information, and belief.

CHARLES H. PARKHURST.
Notary Public.

Decree for Inventory and Bond. (*Filed July* 19, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

GLOBE NATIONAL BANK *et al.*
v.
MARY SPRAGUE, Assignee of Fanny Sprague. } No. 1881.

Upon the foregoing petition, upon hearing, it is ordered, adjudged, and decreed that Mary Sprague, assignee of Fanny Sprague of 802 shares of the capital stock of the Quidnick Company, within twenty (20) days from the date hereof, render unto said court under oath an inventory of the effects, estates, and credits conveyed to her by said Fanny Sprague by the assignment dated December 22d, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of eighty thousand dollars for the faithful performance of the trusts of said deed of assignment.

Entered as decree of court, M. T., 75th day, 1883 (July 19).

By order:

HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

139 EXHIBIT 20.

Citation.

NATIONAL BANK OF COMMERCE *et al.*
v.
FANNY SPRAGUE, Assignee of William Sprague.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

You are hereby required to notify Fanny Sprague, of Providence, assignee of William Sprague, of the filing in the clerk's office of our

supreme court for the county of Providence of the petition of National Bank of Commerce and others representing that they are creditors of said William Sprague, who, on December 22nd, 1873, made an assignment to Fanny Sprague of 1,082 shares of the capital stock of the Quidnick Company, in trust for the equal benefit of his creditors, and that said Fanny Sprague was, on, to wit, July 19th, 1883, ordered by said court to render thereto under oath an inventory of the estates, effects, and credits conveyed to her by said assignment, and also within twenty days give bond, with sureties to the satisfaction of the court, in the sum of $100,000 for the faithful performance of the trusts of said assignment; yet, though said twenty days have elapsed, she has not complied with said order; and praying that said Fanny Sprague be removed from her office and trust as assignee aforesaid, and that some suitable person be appointed in her place; and also to cite the saidrespondent to appear before our supreme court, holden at Providence, within and for the county of Providence, on the 25th day of August, A. D. 1883, at 10 o'clock a. m., that she may then and there show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this eighteenth day of August, A. D. 1883.

CHARLES BLAKE, *Clerk.*

140 PROVIDENCE, *sc:*

PROVIDENCE, *August 18th*, 1883.

I have this day notified and cited the within-named respondent, Fanny Sprague, as required, by leaving a true and attested copy of the within writ with her in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	60
Travel	10
	$1 45

Petition for Removal. (*Filed August* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned creditors of William Sprague, of South Kingston, in said State, petitioning, respectfully show:

First. That they are severally creditors of the said William Sprague, and that on or about the twenty-second day of December, A. D. 1873, said William Sprague, by a deed of assignment in writing made and executed by him on the stock transfer book of the Quidnick Company, a corporation organized under the laws of said State of Rhode Island, assigned, transferred, and conveyed to Fanny Sprague, of Providence, in said county of Providence, one thousand

and eighty-two shares of the capital stock of said Quidnick Company, in trust for the equal benefit of the creditors of him, said William Sprague, and that the said Fanny Sprague accepted the trusts of said assignment, and the undersigned aver that as creditors of the said William Sprague they are severally interested in said deed of assignment.

And second. The petitioners further aver that the value of said shares of said stock of said Quidnick Company so assigned as aforesaid by said William Sprague to said Fanny Sprague exceeds the sum of one hundred thousand dollars, and that the said Fanny
141 Sprague, by reason of her great age and physical infirmity, is incapable of executing the trusts of said deed of assignment, and has, since the execution of said deed of assignment, wholly failed and neglected to execute the trusts thereof, and has authorized and permitted the said William Sprague to manage, use, and control said stock and other stock of said Quidnick Company held by her as assignee of Mary Sprague, Amasa Sprague, and the A. & W. Sprague Manufacturing Company, being a majority of the stock of said Quidnick Company, for the sole use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and the said Fanny Sprague, and has permitted the said assignor, William Sprague, to control and manage the entire property and business of said Quidnick Company for his and her own use and benefit and for the use and benefit of said Amasa Sprague and Mary Sprague, in violation of the trusts of said deed, and has wholly neglected to apply said stock so assigned to her by said William Sprague, or any part thereof or any earnings or income thereof, for any of the purposes named in said deed of assignment, and has wholly neglected to render to the creditors of said William Sprague any account of said stock so assigned to her by said William Sprague as aforesaid, and they aver that said Fanny Sprague and said William Sprague are insolvent.

And third. The petitioners further aver that on the eighteenth day of June, A. D. 1883, certain of the creditors of said William Sprague, including your petitioners, filed in the office of the clerk of the supreme court a petition, addressed to this honorable court, containing the averments in this petition above contained and praying that the said Fanny Sprague might be, by summary order, directed and required to render upon oath to your honors an inventory of the effects, estates, and credits conveyed to her by the said William Sprague by the said deed of assignment, and to give bond, with sufficient sureties to the satisfaction of your honors, for the faithful execution of the trusts of said deed of assignment; that a citation was duly ordered and issued upon said petition and served upon the said respondent, Fanny Sprague, and that said petition came on for a hearing before this honorable court on the 19th day of July, A. D. 1883, and that upon the hearing of said petition on said day a decree of this court was made ordering, adjudging, and decreeing that said Fanny Sprague, assignee of William Sprague of 1,082 shares of the stock of the Quidnick Company, within twenty (20) days of the date of said decree (said decree being dated July

19, 1883), render unto said court under oath an inventory of
142 the estates, effects, and credits conveyed to her by said William Sprague by the assignment dated December 24, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of one hundred thousand dollars for the faithful performance of the trusts of said deed of assignment; and the petitioners further aver that, notwithstanding said decree of this honorable court, the said respondent, Fanny Sprague, did not within said twenty days from the date of said decree render unto said court any inventory of the estate, effects, and credits conveyed to her by said deed of assignment, and did not within said twenty days give any bond for the faithful performance of the trusts of said deed of assignment, as required by said decree of said court, but on the contrary neglected so to do.

Wherefore the petitioners pray that the said Fanny Sprague may be removed from her office and trust as assignee of the said William Sprague under said deed of assignment, and that some suitable person or persons be thereupon appointed in her place, as assignee under said deed from said William Sprague, to receive, take, and recover all the effects, estates, and credits conveyed in said deed of assignment, and the same to hold and dispose of for the uses, intents, and purposes set forth in said deed of assignment.

NATIONAL BANK OF COMMERCE,
By CHARLES MORRIS SMITH, *Vice-Pres't.*
GLOBE NATIONAL BANK,
By B. A. JACKSON, *President.*
SECOND NATIONAL BANK,
WM. W. PAINE, *Cashier.*
PEOPLE'S SAVINGS BANK,
ROBERT KNIGHT, *Vice-Pres.*,
A. C. HOWARD, *Treas.*
E. H. ROBINSON.
WM. D. BRAYTON.
HENRY W. GARDNER.
MERCHANTS' SAVINGS BANK,
By J. W. ANGELL, *Treas.*
LIME ROCK NATIONAL BANK,
By J. W. ANGELL, *Cash.*
NATIONAL BANK OF NORTH AMERICA,
By C. E. JACKSON, *Cash.*
BANK OF AMERICA,
By A. C. TOURTELLOT, *Cash.*
GORHAM P. POMROY.
EVANS & SEAGRAVE.
B. B. & R. KNIGHT.
J. P. CAMPBELL.
JOHN H. MASON & SON.
FRANCIS S. BROWNELL.
WM. H. HOPKINS.

CHARLES H. PARKHURST,
RATHBONE GARDNER,
Solicitors for Petitioners.

143 PROVIDENCE, *sc:*

In the city of Providence, in said county, this 15th day of August, A. D. 1883, Henry W. Gardner, one of the signers of the foregoing petition, personally appeared and made oath that the statements in the said petition made upon his own knowledge are true, and so far as made upon information and belief are true, to the best of his knowledge, information, and belief.

Before me—

RATHBONE GARDNER,
Notary Public.

Order of Notice. (*Entered August* 20, 1883.)

PROVIDENCE, *sc:*

Supreme Court.

NATIONAL BANK OF COMMERCE and Others
v.
FANNY SPRAGUE, Assignee of William Sprague. } M. T. No. 1888.

On the filing of this petition, praying that said Fanny Sprague may be removed from her trust as assignee of William Sprague and that some suitable person may be appointed in her place, it is ordered that the same stand for hearing on Saturday, the 25th day of August, A. D. 1883, at ten o'clock in the forenoon, and that notice thereof to all persons that they may appear, if they shall see fit, and be heard thereon be given by publishing a certified copy of this order in the Providence Daily Journal, a public newspaper published in Providence, on two different days, of which the last shall not be later than the 22d day of August, 1883.

Entered as the order of the court August 20th, 1883.

By order:

HERBERT ALMY,
Assistant Clerk.

144 I certify the above to be a certified copy of the order of the court in the within petition published in the Providence Daily Journal August 21st and 22d, 1883, a public newspaper published in Providence.

HERBERT ALMY,
Assistant Clerk.

Final Decree. (*Filed August* 25, 1883.)

PROVIDENCE, *sc:*

Supreme Court, August 25, 1883.

NATIONAL BANK OF COMMERCE and Others
v.
FANNY SPRAGUE, Assignee of William Sprague. } M. T. No. 1888.

This cause came on to be heard before the court upon the plead-

ings and evidence, and counsel were heard thereon, and upon consideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondent, and that all parties interested therein had been notified by publication, as required by the order of the court herein, and that said Fanny Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Fanny Sprague, assignee of William Sprague of 1,082 shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said William Sprague; and it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, in said county, be, and he hereby is, appointed assignee of said William Sprague of said 1,082 shares of said stock of said Quidnick Company, with all the powers and subject to all the liabilities set forth in chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25, 1883.

By order: HERBERT ALMY,
Assistant Clerk.

145 EXHIBIT 21.

Citation.

NATIONAL BANK OF COMMERCE *et al.*
v.
FANNY SPRAGUE, Assignee of Amasa Sprague.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence*, *sc:*

[L. S] To the sheriffs of our several counties or to their deputies, Greeting:

You are hereby required to notify Fanny Sprague, of Providence, assignee of Amasa Sprague, of the filing in the supreme court, for the county of Providence, of the petition of National Bank of Commerce and others representing that they are creditors of said Amasa Sprague, who, on December 22nd, 1873, made an assignment to Fanny Sprague of 1,082 shares of the capital stock of the Quidnick Company, in trust for the equal benefit of his creditors, and that said Fanny Sprague was, on, to wit, July 19th, 1883, ordered by said court to render thereto, under oath, an inventory of the estates, effects, and credits conveyed to her by said assignment, and also within twenty days give bond, with sureties satisfactory to the court, in the sum of $100,000 for the faithful performance of the trusts of said assignment; yet, though said twenty days have elapsed, she has not complied with said order; and praying that said Fanny Sprague be removed from her office and trust aforesaid, and that some suitable person be appointed in her place; and also to cite the said respondent to appear before our supreme court, holden at Providence, within and for the county of Providence, on

the 25th day of August, A. D. 1883, at 10 o'clock a. m., that she may then and there show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this eighteenth day of August, A. D. 1883.

CHARLES BLAKE, *Clerk.*

PROVIDENCE, *sc:*

PROVIDENCE, *August 18th*, 1883.

I have this day notified and cited the within-named re-
146 spondent, Fanny Sprague, as required, by leaving a true and attested copy of the within writ with her, in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	60
Travel	10
	$1 45

Petition for Removal. (*Filed August* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned, creditors of Amasa Sprague, of Cranston, in said county, petitioning, respectfully show—

First. That they are severally creditors of the said Amasa Sprague, and that on or about the twenty-second day of December, A. D. 1873, the said Amasa Sprague, by a deed of assignment in writing made and executed by him on the stock transfer book of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, assigned, transferred, and conveyed to Fanny Sprague, of Providence, in said county, 1,082 shares of the capital stock of the Quidnick Company, in trust for the equal benefit of all the creditors of him, the said Amasa Sprague, and the said Fanny Sprague accepted the trusts of said deed of assignment, and the undersigned aver that as creditors of the said Amasa Sprague they are severally interested in said deed of assignment.

Second. The petitioners further aver that the value of said shares of said stock of said Quidnick Company so assigned as aforesaid by the said Amasa Sprague to said Fanny Sprague exceeds the sum of one hundred thousand dollars, and that the said Fanny Sprague, by reason of her great age and physical infirmity, is incapable of executing the trusts of said deed of assignment, and has, since the making of said deed, wholly failed and neglected to execute

the trusts thereof, and has authorized and permitted her son, William Sprague, who, on or about said twenty-second day of December, A. D. 1873, by a like deed of assignment, assigned to her 1,082
147 shares of said stock of said Quidnick Company, in trust for the equal benefit of all the creditors of him, the said William Sprague, to manage and control said stock and other stock of said company held by her, by like deeds of assignment, as assignee of said William Sprague, Mary Sprague, and the A. & W. Sprague Manufacturing Company, being a majority of the shares of stock of said Quidnick Company, for the sole use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and the said Fanny Sprague, and has permitted the said William Sprague to control and manage the entire property and business of the said Quidnick Company for the use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague, in violation of the trusts of said deed, and has wholly neglected to apply said stock so assigned to her by said Amasa Sprague, or any part thereof, or any earnings or income thereof, for any of the purposes named in said deed of assignment, and has wholly neglected to render to the creditors of said Amasa Sprague any account of said stock so assigned to her by the said Amasa Sprague as aforesaid, and they aver that said Fanny Sprague and said Amasa Sprague are insolvent.

Third. The petitioners further aver that on the eighteenth day of June, A. D. 1883, certain of the creditors of said Amasa Sprague, including your petitioners, filed in the office of the clerk of this supreme court a petition addressed to this honorable court containing the averments in this petition above contained, and praying that the said Fanny Sprague might be, by summary order, directed and required to render, upon oath, to your honors an inventory of the effects, estates, and credits conveyed to her by the said Amasa Sprague by the said deed of assignment, and to give bond, with sufficient sureties to the satisfaction of your honors, for the faithful execution of the trusts of said deed of assignment; and that a citation was duly ordered and issued upon said petition and was served upon the said respondent, Fanny Sprague, and that said petition came on for a hearing before this honorable court on the nineteenth day of July, A. D. 1883, and that upon the hearing of said petition on said day a decree of this court was made ordering, adjudging, and decreeing that said Fanny Sprage, assignee of Amasa Sprague of 1,082 shares of the stock of the Quidnick Company, within twenty days from the date of said decree (said decree being dated July 19, 1883) render unto said court, under oath, an inventory of the effects, estates, and credits conveyed to her by said Amasa Sprague by the assignment dated December 22, 1873, and also within said time
148 give bond, with sureties to the satisfaction of said court, in the sum of one hundred thousand dollars for the faithful performance of the trusts of said deed of assignment; and the petitioners further aver that, notwithstanding said decree of this court, the said respondent, Fanny Sprague, did not within said twenty days from the date of said decree render unto said court any inventory of the estates, effects, and credits conveyed to her by said

deed of assignment from said Amasa Sprague, and did not within said twenty days give any bond for the faithful performance of the trusts of said deed of assignment, as required by said decree of said court, but, on the contrary, neglected so to do.

Therefore the petitioners pray that the said Fanny Sprague may be removed from her office and trust as assignee of the said Amasa Sprague under said deed of assignment, and that some suitable person or persons be thereupon appointed in her place as assignee under said deed from said Amasa Sprague to receive, take, and recover all the effects, estates, and credits conveyed in said deed of assignment, and the same to hold and dispose of for the uses, interests, and purposes set forth in said deed of assignment.

NATIONAL BANK OF COMMERCE,
By CHARLES MORRIS SMITH, *Vice-Pres't.*
GLOBE NATIONAL BANK,
By B. A. JACKSON, *President.*
SECOND NATIONAL BANK,
WM. W. PAINE, *Cashier.*
PEOPLE'S SAVINGS BANK,
ROBERT KNIGHT, *Vice-Pres't,*
A. C. HOWARD, *Treas.*
E. H. ROBINSON.
WM. D. BRAYTON.
GORHAM P. POMROY.
HENRY W. GARDNER.
B. B. & R. KNIGHT.
J. P. CAMPBELL.
JOHN H. MASON & SON.
MERCHANTS' SAVINGS BANK,
By J. W. ANGELL, *Treas.*
LIME ROCK NATIONAL BANK,
By J. W. ANGELL, *Cash'r.*
NATIONAL BANK OF NORTH AMERICA,
By C. E. JACKSON, *Cash.*
BANK OF AMERICA,
By A. C. TOURTELLOT, *Cash.*
EVANS & SEAGRAVE.
FRANCIS S. BROWNELL.
WM. H. HOPKINS.

RATHBONE GARDNER,
CHARLES H. PARKHURST,
Solicitors for Petitioners.

149 PROVIDENCE, *sc:*

In the city of Providence, in said county, this 15th day of August, A. D. 1883, Henry W. Gardner, one of the signers of the foregoing petition, personally appeared and made oath that the statements in the said petition made upon his own knowledge were true, and so

far as made upon information and belief are true to the best of his knowledge, information, and belief.

Before me—

RATHBONE GARDNER,
Notary Public.

Order of Notice. (*Filed August* 20, 1883.)

PROVIDENCE, *sc:*

Supreme Court.

NATIONAL BANK OF COMMERCE and Others
v.
FANNY SPRAGUE, Assignee of Amasa Sprague. } M.T. No. 1889.

On the filing of this petition, praying that said Fanny Sprague may be removed from her trust as assignee of Amasa Sprague and that some suitable person may be appointed in her place, it is ordered that the same stand for hearing on Saturday, the 25th day of August, 1883, at 10 o'clock in the forenoon, and that notice thereof to all persons interested that they may appear, if they shall see fit, and be heard thereon be given by publishing a certified copy of this order in the Providence Daily Journal, a public newspaper published in Providence, on two different days, of which the last shall be not later than the 22nd day of August, 1883.

Entered as the order of the court August 20th, 1883.

By order: HERBERT ALMY,
Assistant Clerk.

I certify the above to be a certified copy of the order of the court in the within petition published in the Providence Daily Journal, a public newspaper published in Providence, August 21st and 22d, 1883.

HERBERT ALMY,
Assistant Clerk.

150 *Final Decree.* (*Filed August* 25, 1883.)

PROVIDENCE, *sc:*

Supreme Court, August 25, 1883.

NATIONAL BANK OF COMMERCE and Others
v.
FANNY SPRAGUE, Assignee of Amasa Sprague. } M. T. No. 1889.

This cause came on to be heard before the court upon the pleadings and evidence, and counsel were heard thereon, and upon consideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondent, and that all parties interested therein had been notified by publication, as required by

the order of the court herein, and that said Fanny Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Fanny Sprague, assignee of Amasa Sprague of 1,082 shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said Amasa Sprague of said 1,082 shares of said stock; and it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, in said county, be, and he hereby is, appointed assignee of said Amasa Sprague of said 1,082 shares of said stock, with all the powers and subject to all the liabilities set forth in chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25, 1883.

By order: HERBERT ALMY,
Assistant Clerk.

A true copy.

Attest: CHARLES BLAKE, *Clerk.*

151 EXHIBIT 22.

NATIONAL BANK OF COMMERCE
v.
FANNY SPRAGUE, Assignee of A. & W. Sprague M'f'g Co.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

You are hereby required to notify Fanny Sprague, assignee of the A. & W. Sprague Manufacturing Company, of the filing in our supreme court, for the county of Providence, of the petition of National Bank of Commerce and others representing that they are creditors of A. & W. Sprague M'f'g Co., which, on the 22d day of December, 1873, made an assignment to the said Fanny Sprague of 455 shares of the capital stock of the Quidnick Company, in trust for the equal benefit of its creditors, and that said Fanny Sprague was, on, to wit, July 19th, 1883, ordered by said court to render thereto, under oath, an inventory of the estates, effects, and credits conveyed to her by said assignment, and also, within twenty days, give bond, with sureties satisfactory to the court, in the sum of $40,000 for the faithful performance of the trusts of said assignment; yet, though said twenty days have elapsed, she has not complied with said order; and praying that said Fanny Sprague be removed from her office of assignee aforesaid, and that some suitable person be appointed in her place, and also to cite the said respondent to appear before our supreme court, holden at Providence, within and for the county of Providence, on the 25th day of August, A. D. 1883, at 10 o'clock a. m., that she may then and there

show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomes Durfee, chief justice of our supreme court, at Providence, this eighteenth day of August, A. D. 1883.

CHARLES BLAKE, *Clerk.*

152 PROVIDENCE, *sc:*

PROVIDENCE, *August 18th*, 1883.

I have this day notified and cited the within-named respondent, Fanny Sprague, as required, by leaving a true and attested copy of the within writ with her, in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	60
Travel	10
	$1 45

Petition for Removal. (*Filed August* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, A. D. 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned, creditors of the A. & W. Sprague Manufacturing Company, a corporation organized under the laws of the State of Rhode Island, petitioning, respectfully show—

First. That they are severally creditors of the said A. & W. Sprague Manufacturing Company, a corporation organized under the laws of the State of Rhode Island, and that on or about the twenty-second day of December, A. D. 1873, said A. & W. Sprague Manufacturing Company, by its written deed of assignment made and executed by said corporation on the stock transfer book of the Quidnick Company, a corporation organized under the laws of said State, assigned, transferred, and conveyed to Fanny Sprague, of Providence, in said county, four hundred and fifty-five shares of the capital stock of the said Quidnick Company, in trust for the equal benefit of all the creditors of the said A. & W. Sprague Manufacturing Company, and that the said Fanny Sprague accepted the trust of said deed of assignment, and the undersigned aver that, as creditors of the said A. & W. Sprague Manufacturing Company, they are severally interested in said deed of assignment.

153 Second. The petitioners further aver that the value of said shares of said stock of said Quidnick Company so assigned as aforesaid to said Fanny Sprague by said A. & W. Sprague Manufacturing Company exceeds the sum of fifty thousand dollars, and that the said Fanny Sprague, by reason of her great age and

physical infirmity, is incapable of executing the trust of said deed of assignment, and has, since the making thereof, wholly failed and neglected to execute the trusts thereof, and has authorized and permitted her son, William Sprague, who, on or about the said twenty-second day of December, by a like deed of assignment, assigned to her ten thousand and eighty-two shares of the capital stock of the said Quidnick Company, in trust for the equal benefit of all the creditors of him, the said William Sprague, to manage and control said stock and other stocks of said Quidnick Company held by her as assignee of said William Sprague, Amasa Sprague, and Mary Sprague, being a majority of the stock of said Quidnick Company, for the sole use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and the said Fanny Sprague, and has permitted the said William Sprague to control and manage the entire property and business of the said Quidnick Company for the sole use and benefit of said William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague, in violation of the trusts of said deed of assignment, and has wholly neglected to apply said stock so assigned to her by said A. & W. Sprague Manufacturing Company, or any part thereof or any earnings or income thereof, for any of the purposes named in the said deed of assignment, and has wholly neglected to render to the creditors of said A. & W. Sprague Manufacturing Company any account of said stock so assigned to her by said A. & W. Sprague Manufacturing Company as aforesaid, and they aver that the said Fanny Sprague and the said A. & W. Sprague Manufacturing Company are insolvent.

Third. The petitioners further aver that on the eighteenth day of June, A. D. 1883, certain of the creditors of said A. & W. Sprague Manufacturing Company, including your petitioners, filed in the office of the clerk of the supreme court a petition addressed to this honorable court containing the averments in this petition above contained, and praying that the said Fanny Sprague might be by summary order directed and required to render upon oath to your honors an inventory of the effects, estates, and credits conveyed to her by the said A. & W. Sprague Manufacturing Company by the said deed of assignment, and to give bond, with sufficient sureties to the satisfaction of your honors, for the faithful execu-
154 tion of the trusts of said deed of assignment; that a citation was duly ordered and issued upon said petition, and was served upon the said Fanny Sprague, the respondent, and that said petition came on for a hearing before this court on the nineteenth day of July, A. D. 1883, and that upon the hearing of said petition on said day a decree of this court was made ordering, adjudging, and decreeing that said Fanny Sprague, assignee of the A. & W. Sprague Manufacturing Company of four hundred and fifty-five shares of the stock of the Quidnick Company within twenty days of the date of said decree (said decree being dated July 19, 1883), render unto said court under oath an inventory of the estates, effects, and credits conveyed to her by said A. & W. Sprague Manufacturing Company by the assignment dated December twenty-second, 1873, and also within said time give bond, with sureties to the satis-

faction of said court, in the sum of forty thousand dollars for the faithful performance of the trusts of said deed of assignment.

And the petitioners further aver that, notwithstanding said decree of this court, the said respondent, Fanny Sprague, did not within said twenty days from the date of said decree render unto said court any inventory of the estates, effects, and credits conveyed to her by said deed of assignment, and did not within said twenty days give any bond for the faithful performance of the trusts of said deed of assignment, but, on the contrary, neglected so to do. Wherefore the petitioners pray that the said Fanny Sprague may be removed from her office and trust as assignee of the said A. & W. Sprague Manufacturing Company under said deed of assignment, and that some suitable person or persons be thereupon appointed in her place as assignee under said deed from said A. & W. Sprague Manufacturing Company to receive, take, and recover all the effects, estates, and credits conveyed in said deed of assignment, the and same to hold and dispose of for the uses, interests, and purposes set forth in said deed of assignment.

NATIONAL BANK OF COMMERCE,
By CHARLES MORRIS SMITH, *Vice-President.*
GLOBE NATIONAL BANK,
By B. A. JACKSON, *President.*
SECOND NATIONAL BANK,
By WILLIAM W. PAINE, *Cashier.*
PEOPLE'S SAVING BANK,
ROBERT KNIGHT, *Vice-President;*
A. C. HOWARD, *Treasurer.*
E. H. ROBINSON.
WM. D. BRAYTON.
B. B. & R. KNIGHT.
J. P. CAMPBELL.
155 HENRY W. GARDNER.
JOHN H. MASON & SON.
MERCHANTS' SAVINGS BANK,
By J. W. ANGELL, *Treas.*
LIME ROCK NATIONAL BANK,
By J. W. ANGELL, *Cash.*
NATIONAL BANK OF NORTH AMERICA,
By C. E. JACKSON, *Cashier.*
BANK OF AMERICA,
By A. C. TOURTELLOT, *Cash.*
GORHAM P. POMROY.
EVANS & SEAGRAVE.
FRANCIS S. BROWNELL.
WM. H. HOPKINS.

RATHBONE GARDNER,
CHARLES H. PARKHURST,
Solicitors for Petitioners.

PROVIDENCE, *sc:*

In the city of Providence, in said county, this 15th day of August, A. D. 1883, Henry W. Gardner, one of the signers of the foregoing petition, personally appeared and made oath that the statements in the said petition made upon his own knowledge were true, and so far as made upon information and belief were true to the best of his knowledge, information, and belief.

Before me—

RATHBONE GARDNER,
Notary Public.

Order of Notice. (*Filed August* 20, 1883.)

PROVIDENCE, *sc:*

Supreme Court.

NATIONAL BANK OF COMMERCE and Others
v.
FANNY SPRAGUE, Assignee of the A. & W. Sprague M'f'g Co. } M. T. No. 1890.

On the filing of this petition praying that said Fanny Sprague may be removed from her trust as assignee of said A. & W. Sprague Manufacturing Company, and that some suitable person may be appointed in her place, it is ordered that the same stand for hearing on Saturday, the 25th day of August, 1883, at ten o'clock in the forenoon, and that notice thereof to all persons interested, that they may appear if they shall see fit and be heard thereon, be given by publishing a certified copy of this order in the Providence Daily
156 Journal, a public newspaper published in Providence on two different days, of which the last shall be not later than the 22d day of August, 1883.

Entered as the order of the court August 20th, 1883.

By order:

HERBERT ALMY,
Assistant Clerk.

I certify the above to be a certified copy of the order of the court in the within petition published in the Providence Daily Journal, a public newspaper published in Providence, August 21st and 22d, 1883.

HERBERT ALMY,
Assistant Clerk.

Final Decree. (*Filed August* 25, 1883.)

PROVIDENCE, *sc:*

Supreme Court, August 25, 1883.

NATIONAL BANK OF COMMERCE and Others
v.
FANNY SPRAGUE, Assignee of the A. & W. Sprague Manufacturing Company. } M. T. No. 1890.

This cause came on to be heard before the court upon the pleadings and evidence and counsel were heard thereon, and upon consideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondent, and that all parties interested therein had been notified by publication, as required by the order of the court herein, and that said Fanny Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Fanny Sprague, assignee of the A. & W. Sprague Manufacturing Company of 455 shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said A. & W. Sprague Manufacturing Company; and it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, in said county, be, and he hereby
157 is, appointed assignee of said A. & W. Sprague of said 455 shares of said stock of said Quidnick Company, with all the powers and subject to all the liabilities in chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25th, 1883.

By order: HERBERT ALMY,
Assistant Clerk.

EXHIBIT 23.

Citation.

SECOND NATIONAL BANK
v.
FANNY SPRAGUE, Assignee of Mary Sprague.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

You are hereby required to notify Fanny Sprague, of Providence, assignee of Mary Sprague, of the filing in our supreme court for the county of Providence, of the petition of Second National Bank and others representing that they are creditors of said Mary Sprague, who, on December 22d, 1873, made an assignment to said Fanny

Sprague of 601 shares of the capital stock of the Quidnick Company, in trust for the equal benefit of her creditors, and that said Fanny Sprague was, on, to wit, July 19th, 1883, ordered by said court to render thereto, under oath, an inventory of the estates, effects, and credits conveyed to her by said assignment, and also within twenty days to give bond, with sureties satisfactory to the court, in the sum of $60,000 for the faithful performance of the trusts of said assignment; yet, though said twenty days have elapsed, she has not complied with said order; and praying that said Fanny Sprague be removed from her office and trust aforesaid, and that some suitable person be appointed in her place, and also to cite the said respondent to appear before our supreme court, holden at Providence, within and for the county of Providence, on the 25th day of August, A. D. 1883, at 10 o'clock a. m., that she may then and there show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.

158 Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this eighteenth day of August, A. D. 1883.

CHARLES BLAKE, *Clerk.*

PROVIDENCE, *sc:*

PROVIDENCE, *August 18th*, 1883.

I have this day notified and cited the within-named respondent, Fanny Sprague, as required, by leaving a true and attested copy of the within writ with her in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	60
Travel	10
	$1 45

Petition for Removal. (*Filed August* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned, creditors of Mary Sprague, of Providence, in said county, petitioning, show:

First. That they are severally creditors of the said Mary Sprague, and that on or about the twenty-second day of December, A. D. 1873, the said Mary Sprague, by a deed of assignment in writing made and executed by her on the stock transfer books of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, assigned, transferred, and conveyed to Fanny Sprague, of said Providence, 601 shares of the capital stock of said Quidnick

Company, in trust for the equal benefit of all the creditors of her, the said Mary Sprague, and the said Fanny Sprague accepted the trusts of said deed of assignment, and the undersigned aver that as creditors of the said Mary Sprague they are severally interested in said deed of assignment.

Second. The petitioners further aver that the value of said
159 shares of said stock of said Quidnick Company, so assigned as aforesaid by the said Mary Sprague to the said Fanny Sprague, exceeds the sum of sixty thousand dollars, and that the said Fanny Sprague, by reason of her great age and physical infirmity, is incapable of executing the trusts of said deed of assignment, and has, since the making of said deed, wholly failed and neglected to execute the trusts thereof, and has authorized and permitted her son, William Sprague, who, on or about said twenty-second day of December, A. D. 1873, by a like deed of assignment, assigned to her 1,082 shares of said stock of said Quidnick Company, in trust for the equal benefit of all the creditors of him, said William Sprague, to manage and control said stock and other stock of said company held by her by like deeds of assignment, as assignee of said William Sprague, Amasa Sprague, and the A. & W. Sprague Manufacturing Company, being a majority of the shares of stock of said Quidnick Company, for the sole use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and the said Fanny Sprague, and has permitted the said William Sprague to control and manage the entire property and business of the said Quidnick Company for the use and benefit of the said William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague in violation of the trusts of said deed, and has wholly neglected to apply said stock so assigned to her by said Mary Sprague, or any part thereof or any earnings or income thereof, for any of the purposes named in said deed of assignment, and has wholly neglected to render to the creditors of said Mary Sprague any account of said stock so assigned to her by the said Mary Sprague as aforesaid; and they aver that said Fanny Sprague and said Mary Sprague are insolvent.

Third. The petitioners further aver that on the eighteenth day of June, A. D. 1883, certain of the creditors of said Mary Sprague, including your petitioners, filed in the office of the clerk of the supreme court a petition, addressed to this honorable court, containing the averments in this petition above contained and praying that the said Fanny Sprague might be, by summary order, directed and required to render, upon oath, to your honors an inventory of the effects, estates, and credits conveyed to her by the said Mary Sprague by the said deed of assignment, and to give bond, with sufficient sureties to the satisfaction of your honors, for the faithful execution of the trusts of said deed of assignment, and that a citation was duly ordered and issued upon said petition and was served upon the said respondent, Fanny Sprague, and that said petition came on for a hearing before this honorable court on the 19th day of July, A. D. 1883, and that upon the hearing of said petition on said day
160 a decree of this court was made ordering, adjudging, and decreeing that said Fanny Sprague, assignee of Mary Sprague of 601 shares of the stock of the Quidnick Company, within twenty

days from the date of said decree (said decree being dated July 19th, 1883), render unto said court, under oath, an inventory of the effects, estates, and credits conveyed to her by said Mary Sprague by the assignment dated December 22d, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of sixty thousand dollars for the faithful performance of the trusts of said deed of assignment.

And the petitioners further aver that, notwithstanding the said decree of this court, the said respondent, Fanny Sprague, did not, within said twenty days from the date of said decree, render unto said court any inventory of the estates, effects, and credits conveyed to her by said deed of assignment from said Mary Sprague, and did not within said twenty days give any bond for the faithful performance of the trusts of said deed of assignment, as required by said decree of said court, but, on the contrary, neglected so to do.

Wherefore the petitioners pray that the said Fanny Sprague may be removed from her office and trust as assignee of the said Mary Sprague under said deed of assignment, and that some suitable person or persons be thereupon appointed in her place, as assignee under said deed from said Mary Sprague, to receive, take, and recover all the effects, estates, and credits conveyed in said deed of assignment, and the same to hold and dispose of for the uses, intents, and purposes set forth in said deed of assignment.

SECOND NATIONAL BANK,
WM. W. PAINE, *Cashier.*
GLOBE NATIONAL BANK,
By B. A. JACKSON, *President.*
WM. D. BRAYTON.
PEOPLE'S SAVINGS BANK,
ROBERT KNIGHT, *Vice-P's't,*
A. C. HOWARD, *Treas.*
J. P. CAMPBELL.
E. H. ROBINSON.
B. B. & R. KNIGHT.
NATIONAL BANK OF COMMERCE,
By CHARLES MORRIS SMITH, *Vice-Pres't.*
JOHN H. MASON & SON.
MERCHANTS' SAVINGS BANK,
By J. W. ANGELL, *Treas.*
LIME ROCK NATIONAL BANK,
By J. W. ANGELL, *Cash.*
NATIONAL BANK OF NORTH AMERICA,
By C. E. JACKSON, *Cash'r.*
161 BANK OF AMERICA,
By A. C. TOURTELLOT, *Cash.*
GORHAM P. POMROY.
FRANCIS S. BROWNELL.
EVANS & SEAGRAVE.
WM. H. HOPKINS.
RATHBONE GARDNER,
CHARLES H. PARKHURST,
Solicitors for Petitioners.

PROVIDENCE, *sc:*

In the city of Providence, in said county, this 18th day of August, A. D. 1883, Gorham P. Pomroy, one of the signers of the foregoing petition, personally appeared and made oath that the statements made in the said petition made upon his own knowledge were true, and as far as made upon information and belief were true to the best of his knowledge, information, and belief.

Before me—

RATHBONE GARDNER,
Notary Public.

Order of Notice. (*Filed August* 20, 1883.)

PROVIDENCE, *sc:*

Supreme Court.

SECOND NATIONAL BANK and Others
v.
FANNY SPRAGUE, Assignee of Mary Sprague. } M. T. No. 1891.

On the filing of this petition, praying that said Fanny Sprague may be removed from her trust as assignee of Mary Sprague and that some suitable person may be appointed in her place, it is ordered that the same stand for hearing on Saturday, the 25th day of August, 1883, at ten o'clock in the forenoon, and that notice thereof to all persons interested that they may appear, if they shall see fit, and be heard thereon be given by publishing a certified copy of this notice in the Providence Daily Journal, a public newspaper published in Providence, on two different days, of which the last shall not be later than the 22d day of August, 1883.

Entered as the decree of court August 20th, 1883.

By order:

HERBERT ALMY,
Assistant Clerk.

162 I certify the above to be a true copy of the order of the court in the within petition, published in the Providence Daily Journal, a public newspaper published in Providence, August 21st and 22d, 1883.

HERBERT ALMY,
Assistant Clerk.

Final Decree. (*Filed August* 25, 1883.)

PROVIDENCE, *sc:*

Supreme Court, August 25, 1883.

SECOND NATIONAL BANK and Others
v.
FANNY SPRAGUE, Assignee of Mary Sprague. } M. T. No. 1891.

This cause came on to be heard before the court upon the plead-

ings and evidence, and counsel were heard thereon, and upon consideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondent and that all parties interested therein had been notified by publication, as required by the order of the court herein, and that said Fanny Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Fanny Sprague, assignee of Mary Sprague of 601 shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said Mary Sprague.

And it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, in said county, be, and he hereby is, appointed assignee of said Mary Sprague of said 601 shares of said stock of said Quidnick Company, with all the powers and subject to all the liabilities set forth in chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25th, 1883.

By order:

HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

163 EXHIBIT 24.

Citation.

GLOBE NATIONAL BANK
v.
MARY SPRAGUE, Assignee of Fannie Sprague.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

You are hereby required to notify Mary Sprague, of Providence, assignee of Fanny Sprague, of the filing in our supreme court, for the county of Providence, of the petition of Globe National Bank and others representing that they are creditors of said Fanny Sprague, who, on December 22d, 1873, made an assignment to said Mary Sprague of 802 shares of the capital stock of the Quidnick Company, in trust for the equal benefit of her creditors, and that said Mary Sprague was, on, to wit, July 19, 1883, ordered by said court to render thereto, under oath, an inventory of the estates, effects, and credits conveyed to her by said assignment, and also within twenty days give bond satisfactory to the court in the sum of $80,000 for the faithful performance of the trusts of said assign-

ment; yet, though said twenty days have elapsed, she has not complied with said order; and praying that said Mary Sprague be removed from her office and trust aforesaid and that some suitable person be appointed in her place; and also to cite the said respondent to appear before our supreme court, holden at Providence, within and for the county of Providence, on the 25th day of August, A. D. 1883, at 10 o'clock a. m., that she may then and there show cause, if any she has, why the prayer of said petition should not be granted.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this eighteenth day of August, A. D. 1883.

CHARLES BLAKE, *Clerk.*

PROVIDENCE, *sc:*

PROVIDENCE, *August 18th*, 1883.

I have this day notified and cited the within-named re-
164 spondent, Mary Sprague, as required, by leaving a true and attested copy of the within writ with her, in her hands and possession.

CHARLES H. SCOTT,
Deputy Sheriff.

Service	75
Copy	50
Travel	10
	$1 45

Petition for Removal. (*Filed August* 18, 1883.)

PROVIDENCE, *sc:*

Supreme Court. March Term, A. D. 1883.

To the honorable the supreme court of the State of Rhode Island:

The undersigned, creditors of Fanny Sprague, of Providence, in said county, respectfully show—

That they are severally creditors of the said Fanny Sprague, and that on or about the twenty-second day of December, A. D. 1873, the said Fanny Sprague, by her deed of assignment in writing, made and executed upon the stock transfer books of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, assigned, transferred, and conveyed to Mary Sprague, of said Providence, 802 shares of the capital stock of the said Quidnick Company, in trust for the equal benefit of all the creditors of her, the said Fannie Sprague, and the said Mary Sprague accepted the trusts of said deed of assignment, and the undersigned aver that, as creditors of said Fanny Sprague, they are severally interested in said deed of assignment.

Second. The petitioners further aver that the value of said stock of said Quidnick Company so assigned as aforesaid by the said Fanny Sprague to the said Mary Sprague exceeds the sum of $80,000, and that the said Mary Sprague, by reason of her great age and physical infirmity, is incapable of executing the trusts of the said deed of assignment, and has, since the making thereof, wholly failed and neglected to execute the trusts thereof, and has authorized and permitted her nephew, William Sprague, who, on or about said twenty-second day of December, A. D. 1873, by a like deed of assignment, assigned to his mother, said Fanny Sprague, 1,082 shares of said stock of said Quidnick Company, in trust for the equal benefit
165 of all the creditors of him, the said William Sprague, to manage, use, and control said stock for the sole use and benefit of the said William Sprague and the said Fanny Sprague and herself, the said Mary Sprague, and has permitted the said William Sprague to use, control, and manage the entire property and business of the said Quidnick Company for the sole use and benefit of him, the said William Sprague, and the said Fanny Sprague and Mary Sprague, in violation of the trusts of said deed of assignment, and has wholly neglected to apply said stock so assigned to her by the said Fanny Sprague, or any part thereof or any of the earnings or income thereof, for any of the purposes named in said deed of assignment, and has wholly neglected to render to the creditors of said Fanny Sprague any account of said stock so assigned to her by the said Fanny Sprague as aforesaid, and they aver that the said Fanny Sprague and said Mary Sprague are insolvent.

Third. The petitioners further aver that on the 18th day of June, A. D. 1883, certain of the creditors of said Fanny Sprague, including your petitioners, filed in the office of the clerk of the supreme court a petition addressed to the honorable court containing the averments in this petition above contained, and praying that the said Mary Sprague might be by summary order directed and required to render upon oath to your honors an inventory of the effects, estates, conveyed to her by the said Fanny Sprague by the said deed of assignment, and to give bond, with sufficient sureties to the satisfaction of your honors, for the faithful execution of the trusts of said deed of assignment; that a citation was duly ordered and issued upon said petition and was served upon the said respondent, Mary Sprague, and that said petition came on for a hearing before this court on the nineteenth day of July, A. D. 1883, and that upon the hearing of said petition upon said day a decree of this court was made ordering, adjudging, and decreeing that said Mary Sprague, assignee of Fanny Sprague of 802 shares of the stock of the Quidnick Company, within twenty days from the date of said decree (said decree being dated July 19, 1883), render unto said court, upon oath, an inventory of the estates, effects, and credits conveyed to her by said Fanny Sprague by the assignment dated December 22d, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of $80,000 for the faithful performance of the trusts of said deed of assignment.

And the petitioners further aver that, notwithstanding said decree of this court, the said respondent, Mary Sprague, did not within said twenty days from the date of said decree render unto said
166 court any inventory of the estates, effects, conveyed to her by said deed of assignment from said Fanny Sprague, and did not within said twenty days give any bond for the faithful performance of the trusts of said deed of assignment, as required by said decree of said court, but, on the contrary, neglected so to do.

Wherefore the petitioners pray that the said Mary Sprague may be removed from her office and trust as assignee of the said Fanny Sprague under said deed of assignment, and that some suitable person or persons be thereupon appointed in her place as assignee under said deed from said Fanny Sprague to receive, take, and recover all the effects, estates, and credits conveyed in said deed of assignment, and the same to hold and dispose of for the uses, intents, and purposes set forth in said deed of assignment.

GLOBE NATIONAL BANK,
By B. A. JACKSON, *President.*
SECOND NATIONAL BANK,
WM. W. PAINE, *Cashier.*
PEOPLE'S SAVINGS BANK,
ROBERT KNIGHT, *Vice-Pres't;*
A. C. HOWARD, *Treas.*
NATIONAL BANK OF COMMERCE,
By CHARLES MORRIS SMITH, *Vice-Pres't.*
E. H. ROBINSON.
GORHAM P. POMROY.
B. B. & R. KNIGHT.
JOHN H. MASON & SON.
WM. D. BRAYTON.
HENRY W. GARDNER.
J. P. CAMPBELL.
MERCHANTS' SAVINGS BANK,
By J. W. ANGELL, *Treas.*
LIME ROCK NATIONAL BANK,
J. W. ANGELL, *Cash'r.*
NATIONAL BANK OF NORTH AMERICA,
By C. E. JACKSON, *Cashier.*
BANK OF AMERICA,
By A. C. TOURTELLOT, *Cash.*
EVANS & SEAGRAVE.
WM. H. HOPKINS.
FRANCIS S. BROWNELL.

RATHBONE GARDNER,
CHARLES H. PARKHURST,
Solicitors for Petitioners.

PROVIDENCE, *sc:*

In the city of Providence, in said county, this 15th day of August, A. D. 1883, Henry W. Gardner, one of the signers of the foregoing

petition, personally appeared and made oath that the state-
167 ments in said petition made upon his own knowledge are true, and so far as made upon information and belief are true to the best of his knowledge, information, and belief.

Before me—

RATHBONE GARDNER,
Notary Public.

Order of Notice. (*Filed August* 20, 1883.)

PROVIDENCE, *sc:*

Supreme Court.

GLOBE NATIONAL BANK and Others
v.
MARY SPRAGUE, Assignee of Fanny Sprague. } M. T. No. 1892.

On the filing of this petition praying that said Mary Sprague may be removed from her trust as assignee of said Fanny Sprague, and that some suitable person may be appointed in her place, it is ordered that the same stand for hearing on Saturday, the 25th day of August, 1883, at 10 o'clock in the forenoon, and that notice thereof to all persons interested, that they may appear if they shall see fit and be heard thereon, be given by publishing a certified copy of this order in the Providence Daily Journal, a public newspaper published in Providence, on two different days, of which the last shall not be later than the 22d day of August, 1883.

Entered as the decree of court August 20th, 1883.

By order:

HERBERT ALMY,
Assistant Clerk.

I certify the above to be a certified copy of the order of the court in the within petition published in the Providence Daily Journal August 21st and 22d, 1883, a public newspaper published in Providence.

HERBERT ALMY,
Assistant Clerk.

168 *Final Decree.* (*Filed August* 25, 1883.)

PROVIDENCE, *sc:*

Supreme Court, August 25, 1883.

GLOBE NATIONAL BANK and Others
v.
MARY SPRAGUE, Assignee of Fanny Sprague. } M. T. No. 1892.

This cause came on to be heard before the court upon the pleadings and evidence and counsel were heard thereon, and upon con-

sideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondent, and that all parties interested therein had been notified by publication, as required by the order of the court herein, and that said Mary Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Mary Sprague, assignee of Fanny Sprague of 802 shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said Fanny Sprague; and it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, in said county, be, and he hereby is, appointed assignee of said 802 shares of said stock of said Quidnick Company, with all the powers and liabilities set forth in chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25, 1883.

By order:

HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

EXHIBIT 25.

Voted, That this corporation will sell and dispose of its real estate, mills and machinery, stock and supplies in its said mills, situated in Coventry and Warwick, in county of Kent, at public auction, to the highest bidder, for cash, at a place in the city of Providence to be fixed by its president, on the 10th day of January, 1884, at 12 o'clock noon.

169 EXHIBIT 26.

Bill of Complaint.

QUIDNICK COMPANY
vs.
ZECHARIAH CHAFEE *et al.*

(Filed March 15, 1884.)

PROVIDENCE, *sc:*

Supreme Court, March 15, 1884.

To the honorable the supreme court of the State of Rhode Island:

The Quidnick Company, a corporation duly organized under the laws of the State of Rhode Island and located in the city of Providence, in said county, brings this its bill of complaint against Zechariah Chafee, of said Providence, assignee and trustee as hereinafter set forth; Gorham P. Pomroy, of said Providence, assignee as hereinafter set forth; Evan Randolph, of Philadelphia, in the State of Penn-

sylvania; Thomas C. Greene, of East Greenwich, in our county of Kent, receiver of the Franklin Institution for Savings; Claudius B. Farnsworth, of Pawtucket, in said county of Providence, administrator, with the will annexed, of the estate of Edwin Hoyt, in the State of Rhode Island, and Appleton Sturges, of the city and State of New York; and thereupon the complainant alleges and says—

That the complainant is a corporation duly organized under the laws of the State of Rhode Island, and has its place of business in said city of Providence, and that its capital stock now outstanding consists of four thousand three hundred and forty-nine (4,349) shares; that at a legal meeting of said Quidnick Company holden on the thirteenth day of March, A. D. 1884, the following resolution was passed by said company, to wit: "That a dividend of twenty dollars per share upon the outstanding shares of stock in the company is hereby declared payable to the lawful stockholders on and after March 14, 1884, at the office of the treasurer, Charles B. Gould, No. 5 Washington street, in the city of Providence;" and the complainant avers that it is ready and desirous to pay said dividends to the persons duly entitled to receive the same, and well hoped that it would have been able to have paid the same accordingly, and that no dispute would have arisen concerning the same, and that the said defendants, Zechariah Chafee, trustee; Gorham P. Pomroy, assignee; Evan Randolph, Thomas C. Greene, receiver; Claudius B. Farnsworth, administrator, and Appleton Sturges, would have settled between themselves their differences respecting their respective rights to receive said dividends.

170 But now so it is that this Zechariah Chafee, as trustee and assignee of the A. & W. Sprague Manufacturing Company, Amasa Sprague, Mary Sprague, Fanny Sprague, and William Sprague, claims and pretends that he is as said trustee and assignee entitled to receive all the dividends so declared upon four thousand and twenty-two shares (4,022 shares) of said stock as owner of all said shares; and the said Gorham P. Pomroy, as assignee of said A. & W. Sprague Manufacturing Company, Amasa Sprague, Fanny Sprague, Mary Sprague, and William Sprague of said four thousand and twenty-two (4,022) shares of said stock, appointed by this honorable court in place of Fanny Sprague and Mary Sprague, assignees of said shares of said stock, removed from their trusts as said assignees of said stock by the decree of this honorable court, also claims all the dividends on said four thousand and twenty-two (4,022) shares of said stock as owner of all said shares; and the said Evan Randolph also claims to be entitled to all the dividends on all the said four thousand and twenty-two (4,022) shares of said stock as owner of all said shares of said stock; and that the said Thomas C. Greene, receiver of the Franklin Institution for Savings, also claims all the dividends upon two thousand six hundred and nineteen (2,619) shares of said four thousand and twenty-two (4,022) shares of said stock as the owner thereof; and that the said Claudius B. Farnsworth, as administrator, with the will annexed, of the estate of Edwin Hoyt, in Rhode Island, also claims all the dividends on three hundred and twenty-seven shares (327 shares) of the capital stock of said company as the

owner thereof; and that the said Appleton Sturges also claims the dividends upon said three hundred and twenty-seven (327) shares of said stock as the owner thereof; that the said Evan Randolph has commenced a suit in equity in the circuit court of the United States for the district of Rhode Island against this complainant and said respondents, Chafee, Pomroy, and Farnsworth, in which suit he claims title to said whole of said 4,022 shares of said stock as against this complainant and said Chafee, Pomroy, and Greene, which suit is still pending in said court as undetermined; that the said respondent, Zechariah Chafee, trustee and assignee as aforesaid, has commenced a suit in this honorable court against this complainant and others, in which suit said Chafee, as assignee and trustee as aforesaid, claims title to the whole of said four thousand and twenty-two (4,022) shares of said stock, which suit is still pending in said court and is undetermined; that the said Gorham P. Pomroy, assignee as aforesaid, has commenced a suit in this honorable court against this complainant and said Chafee, trustee and assignee as aforesaid, and said Evan Randolph and others, in which suit said Pomroy, as said assignee, claims title to the whole 4,022 shares of said capital stock as against said Chafee and said Randolph, which suit is still pending in this court and is undetermined; that the said Appleton Sturges has also commenced in said circuit court of the United States a suit against this complainant and said Farnsworth, administrator, and others, in which suit said Sturgis claims title to said three hundred and twenty-seven (327) shares of said stock as against said Farnsworth, administrator, and this complainant, which said suit is still pending in said court and is undetermined. The complainant avers that, under the circumstances aforesaid, it is in danger of being greatly harassed on account of said dividends, and cannot safely pay the same or any part thereof to the said claimants thereof without the aid and instruction of this honorable court; and, inasmuch as the complainant is remediless at common law and can only have relief in the premises in a court of equity, it prays that the said respondents, Zechariah Chafee, trustee and assignee as aforesaid; Gorham P. Pomroy, assignee as aforesaid; Evan Randolph, Thomas C. Greene, receiver as aforesaid; Claudius B. Farnsworth, administrator as aforesaid, and Appleton Sturges, respectively, may set forth to whom said dividends on said shares of said stock are respectively due, and may be decreed to interplead and adjust their several claims and demands to said dividends between themselves, this complainant being ready and willing and hereby offering to account for and to pay said dividends now due from it to such of them, the said respondents, Zechariah Chaffee, trustee and assignee; Gorham P. Pomroy, assignee; Evan Randolph, Thomas C. Greene, receiver; Claudius B. Farnsworth, administrator, and Appleton Sturges, as the same shall appear of right to belong and be payable, upon being indemnified by this honorable court for so doing, or to pay the same into the registry of the court, to be disposed of as the court by its decree herein shall direct; and that the said respondents, Zechariah Chafee, trustee and assignee; Gorham P. Pomroy, assignee; Evan Randolph, and Appleton Sturges, may be respect-

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ively restrained by the order and injunction of this honorable court from the further prosecution of the suits aforesaid against this complainant, and from all proceedings at law whatever touching any of the matters in this suit, and the said respondents, Thomas C. Greene, receiver, and Claudius B. Farnsworth, administrator, may in like manner be restrained from all other proceedings at law whatever touching any of the matters in question in this suit; and that a subpœna may issue out of this court to the said respondents,
172 Zechariah Chafee, trustee and assignee; Gorham P. Pomroy, assignee; Evan Randolph, Thomas C. Greene, receiver; Claudius B. Farnsworth, administrator, and Appleton Sturges, commanding them and each of them to appear before said court, at a day to be named therein, and then and there answer the premises and abide and perform the final order of the court herein, and that the complainant may have such other and further relief as the nature of the case may require and as to the court seem meet.

QUIDNICK COMPANY,
[L. S.] CHARLES B. GOULD, *Treasurer.*

CHARLES H. PARKHURST,
RATHBONE GARDNER,
Solicitors for the Complainant.

PROVIDENCE, *sc:*

In the city of Providence, this fifteenth day of March, 1884, Charles B. Gould personally appeared before me and made oath that the statements in the foregoing bill contained, by him signed as treasurer of the Quidnick Company, so far as the same are made of his own knowledge are true, and so far as made upon information and belief are true to the best of his knowledge, information, and belief.

CHARLES H. PARKHURST,
Notary Public.

QUIDNICK COMPANY
vs.
ZECHARIAH CHAFEE, Trustee and Assignee, *et al.* } Equity, No. 2233.

Stephen Harris, of Warwick, in the State of Rhode Island, on oath declares and says that he is president of the Quidnick Company aforesaid; that said company does not in any respect collude with any of the above-named respondents touching any of the matters in question in said cause, nor is said company indemnified by the said respondents or any of them, nor has said company exhibited its said bill of interpleader at the request of said respondents or any of them, but of its own free will and to avoid *to* being sued or molested touching the matters contained in its said bill.

STEPHEN HARRIS, *Pres't.*

173 Subscribed and sworn to, in the city and county of Providence, by the above-named Stephen Harris this 15th day of March, 1884.

Before me—

CHARLES H. PARKHURST,
Notary Public.

C. H. PARKHURST,
R. GARDNER,
Complainant's Solicitors.

M. T., 1884, 20th day. Discontinued, as to Appleton Sturges and C. B. Fansworth, without prejudice and without cost.

Citation.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

To Zechariah Chafee, of Providence, assignee and trustee; [L. S.] Gorham P. Pomroy, of said Providence, assignee; Evan Randolph, of Philadelphia, in the State of Pennsylvania; Thomas C. Greene, of East Greenwich, in our county of Kent, receiver of the Franklin Institution for Savings; Claudius B. Farnsworth, of Pawtucket, in said county of Providence, administrator, with will annexed, of the estate of Edwin Hoyt, in the State of Rhode Island, and Appleton Sturges, of the city and State of New York, Greeting:

For certain causes offered to our supreme court, in said county, in chancery, we hereby command and strictly enjoin you that, laying aside all other matters and things and notwithstanding any excuse, you personally appear before said court, at 10 o'clock a. m., at the court-house, at Providence, in said county, on the 22nd day of March, A. D. 1884, and then and there full, true, and perfect answer make, upon solemn oath or affirmation, to the bill of complaint of Quidnick Company now filed of record in said court, in said county, and to do and receive whatever our said court shall order against you in the premises in this behalf.

Hereof fail not, under the pains and penalties that may ac-
174 crue in consequence of neglect thereof; and the sheriff of said county of Providence or his deputy or the sheriffs or their deputies of other counties are hereby commanded to make service of this writ by reading the same to the said respondents residing or being within this State or by leaving a true and attested copy thereof at their last and usual places of abode before said twenty-second day of March, A. D. 1884; and any disinterested person is hereby authorized to make service hereof upon the respondents personally residing or being without this State, such disinterested person making affidavit of such service, the manner in which, the place where, and the time when such service was made.

Hereof make true return on or before said 22d day of March, A. D. 1884.

Witness Hon. Thomas Durfee, our chief justice, at Providence, this fifteenth day of March, A. D. 1884.

CHARLES BLAKE, *Clerk.*

I certify that on the seventeenth day of March, A. D. 1884, at half past eight o'clock in the forenoon, I gave to the within-named Appleton Sturges, in his hand, in the city and State of New York, a true copy of this subpœna, attested by Herbert Almy, assistant clerk of the supreme court; and on the eighteenth day of March, A. D. 1884, at one o'clock in the afternoon, I gave to the within-named Evan Randolph, in his hand, in Philadelphia, in the State of Pennsylvania, a true copy of this subpœna, attested by Herbert Almy, assistant clerk of said supreme court; and I certify that I am a disinterested person and have no interest whatever in the within-named case.

CLAUDE JOSEPH FARNSWORTH.

PROVIDENCE, *sc:*

MARCH 21, 1884.

Signed and sworn to by the above-named Claude Joseph Farnsworth.

Before me—

CLAUDIUS B FARNSWORTH,
Notary Public.

2 services and copies -----	$2 00
280 miles' travel----------	28 00
	$30 00

Received fees from C. H. Parkhurst.

CLAUDE JOSEPH FARNSWORTH.

175 *Amendment to Bill.* (*Filed April* 14, 1884.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1884.

QUIDNICK COMPANY
v.
ZECHARIAH CHAFEE, Trustee, *et als.* } Equity, 2233.

The complainant amends its said bill as follows: By inserting after the second paragraph of said bill, which ends with the words "that its capital stock now outstanding consists of four thousand three hundred and forty-nine (4,349) shares," the following: That said Quidnick Company has sold all its real estate and manufacturing property, and has given up its business of manufacturing, and now has on hand proceeds of said sales, and is now prepared to pay to its stockholders, in liquidation of its business, said proceeds by way of stock dividends in liquidation.

By its solicitor, C. H. PARKHURST.

Answer of Gorham P. Pomroy. (*Filed April* 14, 1884.)

PROVIDENCE, *sc.:*

Supreme Court. March Term, 1884.

QUIDNICK COMPANY
v.
ZECHARIAH CHAFEE, Trustee, *et al.* } Equity, 2233.

The answer of Gorham P. Pomroy, assignee, one of the respondents, to the above-entitled bill of complaint.

The respondent, for answer to said bill, says—

First. That he admits it to be true, as is in said bill of complaint alleged, that the said complainant, The Quidnick Company, is a corporation duly organized under the laws of the State of Rhode Island and has its place of business in the city of Providence, and
176 that its capital stock now outstanding consists of four thousand three hundred and forty-nine (4,349) shares.

Second. This respondent also admits it to be true, as alleged in said bill, that at a legal meeting of said Quidnick Company holden March 13, 1884, the resolution recited in said bill, declaring a dividend of twenty dollars per share upon said outstanding shares, payable to the lawful stockholders, as is in said resolution set forth, was adopted, and also admits that said dividend was made in liquidation, as in said bill alleged.

Third. This respondent, further answering, says that he claims to be the owner of four thousand and twenty-two (4,022) shares of said capital stock and to be entitled to receive the said dividend so declared thereon, and has demanded payment of the same from said complainant, which payment has been refused by said complainant.

That his title to said stock is devised as follows:

For many months prior to the month of December, A. D. 1873, William Sprague and Amasa Sprague were each the owners in their own right of one thousand and eighty-two (1,082) shares of said capital stock, and Fanny Sprague was the owner in her own right of eight hundred and two (802) shares of said capital stock, and Mary Sprague was the owner of six hundred and one (601) shares of said capital stock in her own right, and the A. & W. Sprague Manufacturing Company was the owner in its own right of four hundred and fifty-five (455) shares of capital stock; that on or about December 22nd, A. D. 1873, said Amasa Sprague assigned and transferred upon the stock transfer book of said Quidnick Company, by an assignment and transfer in writing by him signed, to said Fanny Sprague said one thousand and eighty-two shares of said capital stock, in trust for the equal benefit of all his creditors, which transfer and assignment was duly accepted by said Fanny Sprague, a copy of which assignment and transfer, marked "A," is hereto annexed and made part hereof; that on or about said December 22, 1873, said William Sprague, by a like written assignment and transfer by him signed upon said stock trans-

fer book, assigned and transferred to said Fanny Sprague said one thousand and eighty-two (1,082) shares of said capital stock, in trust for the equal benefit of all his creditors, which said transfer and assignment was duly accepted by said Fanny Sprague, a copy of which said assignment and transfer, marked "B," is hereto annexed and made part hereof; that said Mary Sprague, on or about said December 22, 1873, by a like written assignment and transfer by her signed upon said stock transfer book, assigned and transferred said six hundred and one (601) shares of said
177 capital stock to said Fanny Sprague, in trust for the equal benefit of the creditors of the said Mary Sprague, which said assignment and transfer was duly accepted by said Fanny Sprague, and a copy of the said assignment and transfer, marked "C," is hereto annexed and made part hereof; that on or about said December 22, 1873, said A. & W. Sprague Manufacturing Company, by a like written assignment and transfer by it signed upon said stock transfer book, assigned and transferred said four hundred and fifty-five (455) shares of said capital stock to said Fanny Sprague, in trust for the equal benefit of all its creditors, which said assignment and transfer was duly accepted by said Fanny Sprague, a copy of which said assignment and transfer, marked "D," is hereto annexed and made part hereof; that on or about said December 22, 1873, said Fanny Sprague, by a like written assignment and transfer by her signed upon said stock transfer book, assigned and transferred to said Mary Sprague said eight hundred and two (802) shares of said capital stock, in trust for the equal benefit of all the creditors of her, the said Fanny Sprague, which said assignment and transfer was duly accepted by said Mary Sprague, and a copy of the same, marked "E," is hereto annexed and made part hereof.

Fourth. This respondent, further answering, says that on or about the nineteenth day of June, A. D. 1883, Henry W. Gardner and other creditors of said William Sprague filed their petition, in writing and under oath, in this honorable court, setting forth that they were respectively creditors of said William Sprague, and were interested in the said deed of assignment of said one thousand and eighty-two shares of the capital stock of said Quidnick Company made by said William Sprague to said Fanny Sprague as aforesaid; that said Fanny Sprague has failed to execute the trusts of said assignment of said shares, and was insolvent; and praying that said Fanny Sprague be required to give bonds, with surety, for the faithful performance of the trusts of said deed of assignment; whereupon, after notice to said Fanny Sprague, as required by said court, and after a hearing thereon by said court, such proceedings were had that said Fanny Sprague was, by the order and decree of said court, required to give bonds to the clerk of said court, with sureties, in the sum of one hundred thousand dollars ($100,000), on or before August 8, A. D. 1883, for the faithful performance of the trusts of said deed of assignment, and also to render on oath to said court an inventory of the effects, estates, and credits conveyed by said deed of assignment; and this respondent avers that said Fanny Sprague did not, on or before said

eighth day of August, A. D. 1883, or at any other time, render
178 upon oath to said court such inventory or give such bond so required by said decree, but wholly neglected to comply with any of the requirements of said decree; whereupon the said Henry W. Gardner and others filed their petition, in writing and under oath, in said court, on or about the eighteenth day of ——, A. D. 1883, setting forth that they were creditors of said William Sprague, and were interested in said deed of assignment, and also setting forth the decree aforesaid, and that the said Fanny Sprague had wholly neglected and refused to comply with any of the requirements of said decree; and praying that said Fanny Sprague be removed from her trust as said assignee and some suitable person be appointed in her place; whereupon, after notice to said Fanny Sprague, as required by said court, and after a hearing upon said petition by said court, a decree was made by said court removing said Fanny Sprague from her said trust as assignee of said William Sprague of one thousand and eighty-two (1,082) shares of said capital stock and appointing Gorham P. Pomroy, this respondent, assignee of said shares of said capital stock in place of Fanny Sprague, removed from her trust as said assignee; whereby, by operation of law, this respondent became vested with the title as assignee of said William Sprague to said one thousand and eighty-two shares of said capital stock of said Quidnick Company; all which proceedings and decrees remain of record in this honorable court, and this respondent makes the same part of this his answer and hereto annexes a copy thereof, marked " F."

Fifth. This respondent, further answering, says that on or about the nineteenth day of June, A. D. 1883, Henry W. Gardner and others, creditors of said Amasa Sprague, filed their petition, in writing and under oath, in this honorable court, setting forth that they were, respectively, creditors of said Amasa Sprague, and were interested in the said deed of assignment of said one thousand and eighty-two (1,082) shares of the capital stock of said Quidnick Company made by said Amasa Sprague to said Fanny Sprague as aforesaid; that said Fanny Sprague had failed to execute the trusts of said deed of assignment, and was insolvent; and praying that said Fanny Sprague be required to give bonds, with surety, for the faithful performance of the trusts of said deed of assignment. Whereupon, after notice to said Fanny Sprague, as required by said court, and after a hearing thereon by said court, such proceedings were had that said Fanny Sprague was, by the order and decree of said court, required to give bond, with sureties, to the clerk of said court in the sum of one hundred thousand dollars ($100,000), on or before August 8, A. D. 1883, for the faithful performance of the trusts of said deed of assignment, and
179 also to render on oath to said court an inventory of the effects, estates, and credits conveyed by said deed of assignment; and this respondent avers that said Fanny Sprague did not, on or before said eighth day of August, A. D. 1883, or at any other time, render upon oath to said court such inventory or give bond as required by said decree, but wholly neglected to comply with any of the requirements of said decree. Whereupon the said Henry W. Gardner and others filed their petition, in writing and under oath,

in said court, on or about the eighteenth day of August, A. D. 1883, setting forth that they were creditors of said Amasa Sprague and were interested in said deed of assignment, and also setting forth the decree aforesaid, and that the said Fanny Sprague had wholly neglected to comply with any of the requirements of said decree, and praying that said Fanny Sprague be removed from her trust as said assignee and some suitable person appointed in her place. Whereupon, after notice to said Fanny Sprague, as required by said court, and after a hearing upon said petition by said court, a decree was made by said court removing said Fanny Sprague from her trust as assignee of said Amasa Sprague of one thousand and eighty-two (1,082) shares of said capital stock, and appointing the respondent, Gorham P. Pomroy, assignee of the said Amasa Sprague of said shares of said capital stock in place of said Fanny Sprague, removed from her trust as said assignee, whereby by operation of law this respondent became vested with the title as assignee of said Amasa Sprague to said one thousand and eighty-two (1,082) shares of said capital stock of said Quidnick Company; all which proceedings and decrees remain of record in this honorable court, and this respondent makes the same part of this his answer, and hereto annexes a copy thereof, marked "G."

Sixth. This respondent, further answering, says that on or about the nineteenth day of June, A. D. 1883, Henry W. Gardner and others, creditors of said Mary Sprague, filed their petition, in writing and under oath, in this honorable court, setting forth that they were, respectively, creditors of said Mary Sprague, and were interested in said deed of assignment of said six hundred and one (601) shares of the said capital stock of said Quidnick Company made by said Mary Sprague to said Fanny Sprague as aforesaid; that said Fanny Sprague had failed to execute the trusts of said deed of assignment, and was insolvent; and praying that the said Fanny Sprague be required to give bonds, with surety, for the faithful performance of the trusts of said deed of assignment. Whereupon, after the notice to said Fanny Sprague, as required by said court, and after a
180 hearing thereon by said court, such proceedings were had that said Fanny Sprague was, by order and decree of said court, required to give bond, with sureties, to the clerk of said court in the sum of sixty thousand dollars ($60,000), on or before August 8, A. D. 1883, for the faithful performance of the trusts of said deed of assignment, and also to render on oath to said court an inventory of the effects, estates, and credits conveyed by said deed of assignment; and this respondent avers that said Fanny Sprague did not, on or before said eighth day of August, A. D. 1883, or at any other time, render on oath to said court such inventory or give such bond, as required by said decree, but wholly neglected to comply with any of the requirements of said decree. Whereupon the said Henry W. Gardner and others, on or about the eighteenth day of August, 1883, filed their petition, under oath and in writing, in said court setting forth that they were creditors of said Mary Sprague and were interested in said deed of assignment; also setting forth the decree aforesaid, and that the said Fanny Sprague had wholly neg-

lected to comply with any of the requirements of said decree, and praying that said Fanny Sprague be removed from her trust as said assignee. Whereupon, after notice to said Fanny Sprague, as required by said court, and after a hearing upon said petition by said court, a decree was made by said court removing said Fanny Sprague from her said trust as assignee of said Mary Sprague of six hundred and one (601) shares of said capital stock, and appointing this respondent, Gorham P. Pomroy, assignee of said shares of said capital stock in place of said Fanny Sprague, removed from her trust as assignee, whereby by operation of law this respondent became vested with the title as assignee of said Mary Sprague to said six hundred and one (601) shares of said capital stock of said Quidnick Company; all of which proceedings and decrees remain of record in this honorable court, and this respondent makes the same part of this his answer and hereto annexes a copy thereof, marked "H."

Seventh. This respondent, further answering, says that on or about the nineteenth day of June, A. D. 1883, Henry W. Gardner and other creditors of said A. & W. Sprague Manufacturing Company filed their petition, in writing and under oath, in this honorable court, setting forth that they were, respectively, creditors of said A. & W. Sprague Manufacturing Company, and were interested in said deed of assignment of said four hundred and fifty-five (455) shares of the capital stock of said Quidnick Company made by said A. & W. Sprague Manufacturing Company to said Fanny Sprague as aforesaid; that said Fanny Sprague had failed to exe-
181 cute the trusts of said deed of assignment, and was insolvent, and praying that said Fanny Sprague be required to give bonds, with surety, for the faithful performance of the trusts of said deed of assignment. Whereupon, after notice to said Fanny Sprague, as required by said court, and after a hearing on said petition by said court, such proceedings were had that said Fanny Sprague was, by the order and decree of said court, required to give bond, with sureties, to the clerk of said court in the sum of forty thousand dollars ($40,000), on or before August 8, A. D. 1883, for the faithful performance of the trusts of said deed of assignment, and also to render on oath to said court an inventory of the effects, estates, and credits conveyed by said deed of assignment; and this respondent avers that said Fanny Sprague did not, on or before said eighth day of August, A. D. 1883, or at any other time, render on oath to said court such inventory or give such bond as required by said decree, but wholly neglected to comply with any of the requirements of said decree. Whereupon said Henry W. Gardner and others filed their written petition under oath in said court on or about the eighteenth day of August, 1883, setting forth that they were creditors of said A. & W. Sprague Manufacturing Company and were interested in said deed of assignment, and also setting forth the decree aforesaid, and that the said Fanny Sprague had wholly neglected to comply with any of the requirements of said decree, and praying that said Fanny Sprague be removed from her trust as said assignee and some suitable person be appointed in her place. Whereupon, after notice to said Fanny Sprague, as required by said court, and after a hear-

ing upon said petition by said court, a decree was made by said court removing said Fanny Sprague from her said trust as assignee of said A. & W. Sprague Manufacturing Company of four hundred and fifty-five (455) shares of said capital stock, and appointing this respondent, Gorham P. Pomroy, assignee of said shares of said capital stock in place of said Fanny Sprague, removed from her trust as said assignee, whereby by operation of law this respondent became vested with the title as assignee of said A. & W. Sprague Manufacturing Company to said four hundred and fifty-five (455) shares of said capital stock of said Quidnick Company; all which proceedings remain of record in this honorable court; and this respondent makes the same part of this his answer, and hereto annexes a copy of the same, marked "I."

Eighth. And this respondent, further answering, says that on or about the nineteenth day of June, A. D. 1883, Henry W. Gardner and others, creditors of said Fanny Sprague, filed their peti-
182 tion, in writing and under oath, in this honorable court, setting forth that they were, respectively, creditors of said Fanny Sprague, and were interested in said deed of assignment of said eight hundred and two (802) shares of the capital stock of said Quidnick Company made by said Fanny Sprague to said Mary Sprague aforesaid; that said Mary Sprague had failed to execute the trusts of said deed of assignment, and was insolvent; and praying that said Mary Sprague should be required to give bond, with surety, for the faithful performance of the trusts of said deed of assignment. Whereupon, after notice to Mary Sprague, as required by said court, and after a hearing on said petition by said court, such proceedings were had that said Mary Sprague was, by the order and decree of said court, required to give bond, with sureties, to the said clerk of said court in the sum of eighty thousand dollars ($80,000), on or before August 8, A. D. 1883, for the faithful performance of the trusts of said deed of assignment, and also to render on oath to said court an inventory of the estates, effects, and credits conveyed by said deed of assignment; and the respondent avers that said Mary Sprague did not, on or before said eighth day of August, A. D. 1883, or at any other time, render on oath to said court such inventory or file such bond as required by said decree, but wholly neglected to comply with any of the requirements of said decree. Whereupon said Henry W. Gardner and others, on or about August 18, A. D. 1883, filed their petition, in writing and under oath, in said court, setting forth that they were creditors of said Fanny Sprague and were interested in said deed of assignment, and also setting forth the proceedings and decree aforesaid, and that the said Mary Sprague had wholly neglected to comply with any of the requirements of said decree, and praying that said Mary Sprague be removed from her trust as said assignee and some suitable person appointed in her place. Whereupon, after notice to said Mary Sprague, as required by said court, and after a hearing upon said petition by said court, a decree was made by said court removing said Mary Sprague from her said trust as assignee of said Fanny Sprague of eight hundred and two (802) shares of said capital stock, and appointing this re-

spondent, Gorham P. Pomroy, assignee of said shares of said capital stock in place of said Mary Sprague, removed from her trust as said assignee, whereby by operation of law this respondent became vested with the title as assignee of said Fanny Sprague to eight hundred and two (802) shares of said capital stock of said Quidnick Company, all of which proceedings remain of record in this honorable court, and this respondent makes the same part of this his answer, and hereto annexes a copy thereof, marked "J."

183 Ninth. And this respondent, further answering, says that, as assignee as aforesaid of Amasa Sprague of ten hundred and eighty-two (1,082) shares of the capital stock of said Quidnick Company, as assignee as aforesaid of William Sprague of ten hundred and eighty-two (1,082) shares of said capital stock, as assignee as aforesaid of Mary Sprague of six hundred and one (601) shares of said capital stock, as assignee as aforesaid of the A. &. W. Sprague Manufacturing Company of four hundred and fifty-five (455) shares of said capital stock, and as assignee as aforesaid of Fanny Sprague of eight hundred and two (802) shares of said capital stock, being in all four thousand and twenty-two (4,022) shares of said capital stock, he, this respondent, claims to be the lawful owner of the entire four thousand and twenty-two (4,022) shares of the capital stock of said Quidnick Company, and he is entitled as assignee as aforesaid as against said respondents, Zechariah Chafee, assignee and trustee as aforesaid; Evan Randolph, and Thomas C. Greene, receiver, to receive all the dividends thereon made by the said complainant, said Quidnick Company, as set forth and recited in said bill of complaint; and he avers that neither the said Zechariah Chafee, assignee and trustee as aforesaid, nor the said Evan Randolph, nor the said Thomas C. Greene, receiver, are [is] entitled to receive the said dividends or any part thereof on said stock or on any part thereof.

Tenth. This respondent, further answering, says that on the third day of September, in the year 1883, this defendant filed and entered in the supreme court of the State of Rhode Island his bill of complaint against the said Evan Randolph and one J. Cooke Longstreth, and against the said Amasa Sprague, William Sprague, Fanny Sprague, Mary Sprague, and Zechariah Chafee, and the said Quidnick Company, and A. & W. Sprague Manufacturing Company, and in said bill of complaint stated that he, the said Pomroy, by virtue of certain decrees made and entered in said supreme court in certain causes therein pending and in said bill recited and set forth, as assignee of Amasa Sprague of 1,082 shares of the capital stock of said Quidnick Company, of Mary Sprague of 601 shares of said capital stock, of Fanny Sprague of 802 shares of said capital stock, of William Sprague of 1,082 shares of said capital stock, and of said A. & W. Sprague Manufacturing Company of 455 shares of said capital stock, was entitled to the ownership of the entire number of all the shares aforesaid, being 4,022 shares of the capital stock of said Quidnick Company; and also stating that the said Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague and the said A. & W. Sprague Manufacturing Company, fraudulently combining

184 with the said Evan Randolph and the said J. Cooke Long-

streth, to defraud this defendant of his right to said shares of said stock and to throw a cloud upon his title thereto, procured the said William Sprague, claiming to be president of said Quidnick Company, to issue to said Randolph a certificate, under the seal of said Quidnick Company, of the whole of said 4,022 shares of said capital stock in the words and figures following:

No. 43.

Quidnick Company, Providence, R. I.

Capital, $500,000. Incorporated 1862. 5,000 shares, $100 each.

This is to certify that Evan Randolph, of Philadelphia, is the owner at the date hereof of four thousand twenty-two shares of capital stock of the Quidnick Company, transferable only upon the books of the said company, at their office, in Providence, R. I.

WILLIAM SPRAGUE, *President.*

W. SPRAGUE, *Secretary.*

Providence, R. I., Aug. 6, 1883.

And praying in said bill of complaint that said supreme court would decree that by force and virtue of the decree in said bill recited and set forth, appointing this defendant assignee of said Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague, and said A. & W. Sprague Manufacturing Company of said shares of said capital stock of said Quidnick Company, this defendant was entitled to all said 4,022 shares of said capital stock, and was entitled to vote thereon at all meetings of said Quidnick Company, and also praying that said supreme court would further decree that said certificate of said 4,022 shares of said stock issued to said Randolph by said William Sprague, claiming to be president of said Quidnick Company, was wrongfully and illegally issued by said William Sprague, and was void and of no effect, and that the said Evan Randolph should deliver the same up to be cancelled, and also praying that the said Evan Randolph and J. Cooke Longstreth and each of them, their agents, servants, employees, and officers, might be perpetually enjoined from acting or claiming to act as stockholders of said Quidnick Company, and from asserting any title to any of said shares of said capital stock, and from in
185 any way interfering with or disturbing this defendant in his rights as owner and holder as assignee as aforesaid of said 4,022 shares of said stock, and from voting or attempting to vote upon any of said shares, and from attending upon or holding any meetings of said Quidnick Company, and from interfering in any way with any of the affairs or business of said company, and also praying that a subpœna might issue in said cause; and this defendant avers that a subpœna was issued in said cause by order of said court, and was personally served upon the said Evan Randolph upon the tenth day of September, A. D. 1883, and was returned to said court, and that the said Evan Randolph neglected to enter his appearance in said cause or to file any plea or answer therein, and

that by the decree of said court, entered November 5, 1883, said bill of complaint in said cause was taken as confessed as against the said Evan Randolph; and this defendant further avers that thereafterwards, to wit, December 29, A. D. 1883, a further decree was entered in said cause by said court in the words and figures following:

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence*, } *sc:*

Supreme Court. October Term, A. D. 1883.

GORHAM P. POMROY, Assignee, *v.* EVAN RANDOLPH *et als.* } Equity, No. 2161.

This cause came on to be heard before the court, and it appearing to the court that Evan Randolph and J. Cooke Longstreth, two of the respondents in said cause, have been personally served with the subpœna in said cause and have failed to enter their appearance in said cause or to file any answers therein, and that by the decree of said court in said cause November 5, A. D. 1883, the bill of complaint in said cause was taken as confessed as against said Evan Randolph and said J. Cooke Longstreth, it is now, on this 72d day of said term, upon motion of the complainant, after the reading of the bill of complaint in said cause, duly sworn to by the complainant, ordered, adjudged, and decreed by the court, as against said Evan Randolph and J. Cooke Longstreth, as follows:

First. That by force and virtue of the decree in said bill recited and set forth appointing the said complainant assignee of William Sprague of 1,082 shares of the capital stock of the Quidnick Company and assignee of Amasa Sprague of 1,082 shares of the
186 capital stock of said Quidnick Company and assignee of Mary Sprague of 601 shares of the capital stock of said Quidnick Company and assignee of the A. & W. Sprague Manufacturing Company of 455 shares of the capital stock of said Quidnick Company, in place of Fanny Sprague, removed by said court from her trust as assignee of said Amasa Sprague, William Sprague, Mary Sprague, and said A. & W. Sprague Manufacting Company of said shares of said capital stock of said Quidnick Company, and assignee of Fanny Sprague of 802 shares of the capital stock of said Quidnick Company, in place of Mary Sprague, removed by said court from her trust as assignee of said Fanny Sprague of said shares of said stock, the said complainant is entitled to all the shares of said capital stock conveyed to said Fanny Sprague, assignee, by said Amasa Sprague, Mary Sprague, William Sprague, and said A. & W. Sprague Manufacturing Company, by transfers made by them, respectively, upon the stock transfer book of said Quidnick Company, on or about December 22, 1873, in said bill of complaint set forth, being 3,220 shares of the said capital stock of said Quidnick Company, subject to the lawful claims of the respondent, Zechariah Chafee, upon said shares, as set forth in said bill of complaint, if any such lawful claims

there be, and is also entitled to all the shares of the said capital stock of said Quidnick Company, 802 in number, conveyed by said Fanny Sprague to said Mary Sprague, by transfer made by said Fanny Sprague to said Mary Sprague upon the stock transfer book of said Quidnick Company, on or about December 22, 1873, in said bill of complaint set forth, subject to the lawful claims of said Zechariah Chafee on said shares, as set forth in said bill of complaint, if any such lawful claims there be, and is entitled to vote upon all said 4,022 shares of said capital stock at all meetings of said Quidnick Company.

Second. That the certificate of 4,022 shares of the capital stock of said Quidnick Company issued to said Evan Randolph by William Sprague, claiming to be president of said Quidnick Company, bearing date Aug. 6, 1883, numbered 43, in the complainant's bill set forth, was wrongfully and illegally issued by said William Sprague to said Evan —, and is void and of no effect, and said Evan Randolph is hereby decreed to deliver up said certificate to the complainant that the same may be cancelled.

Third. That the said respondents, Evan Randolph and J. Cooke Longstreth, and each of them, their agents, servants, employees, and officers, and all persons claiming under them or either of them, are hereby perpetually enjoined from acting or claiming to act as stock-
titleholders of said Quidnick Company, and from asserting any
187 to any of the said shares of the capital stock of said Quidnick Company, and from in any way interfering with or disturbing the complainant in his rights as holder and owner, as assignee as aforesaid of said 4,022 shares of said capital stock of said Quidnick Company, and from voting or attempting to vote upon any of said shares of said stock, and from attending upon and holding any meetings of said Quidnick Company, and from interfering in any way with any of the affairs or business of said Quidnick Company.

Entered as the decree of the court this 22d day of the October term, 1883 (Dec. 29, 1883).

By order:

HERBERT ALMY,
Assistant Clerk.

Enter.
J. H. STINESS, *J. S. C.*
G. M. CARPENTER, *J.*

And this defendant avers that all the said proceedings are now of record in this honorable court and are made part of this his answer, and he prays he may have the same benefit and advantage thereof as if he had pleaded the same in bar to the claim of said Evan Randolph to be the owner of said 4,022 shares of said capital stock.

Eleventh. And this respondent prays that your honors will decree that he is entitled, as against said respondents, Zechariah Chafee, trustee and assignee, Evan Randolph, and Thomas C. Greene, receiver, to receive, as assignee as aforesaid of said four thousand and twenty-two (4,022) shares of the capital stock of said Quidnick Company, all the dividends declared upon said four thousand and twenty-

two (4,022) shares of said capital stock, and to hold the same as assignee as aforesaid, and for such other and further relief in the premises as the nature of the case shall require and as to this honorable court shall seem meet, and hereby submits to a decree to interplead with the other respondents in said cause as to the matters in controversy therein.

GORHAM P. POMROY, *Assignee.*

CHARLES H. PARKHURST,
RATHBONE GARDNER,
Solicitors.

PROVIDENCE, *sc:*

In the city of Providence, this fourteenth day of April, A. D. 1884, the above-named Gorham P. Pomroy personally appeared before me and made oath that the statements in the foregoing 188 answer by him signed, so far as the same are made of his own knowledge, are true, and so far as made upon information and belief are true to the best of his knowledge, information, and belief.

CHARLES H. PARKHURST,
Notary Public.

Entry of Discontinuance as to C. B. Farnsworth and Appleton Sturges.
(*Filed April* 15, 1884.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1884.

QUIDNICK COMPANY
v.
Z. CHAFEE, Trustee, *et al.* } Equity, 2233.

The complainant hereby discontinues said bill against the defendants, Appleton Sturges and Claudius B. Farnsworth, administrator, without prejudice and without costs.

By its solicitors:

C. H. PARKHURST &
R. GARDNER.

Assented to.
J. F. LONSDALE,
Sol. for Appleton Sturges.
J. M. RIPLEY,
Sol. for C. B. Farnsworth, Adm.

Answer of Zechariah Chafee. (*Filed April* 22, 1884.)

PROVIDENCE, *sc*.

Supreme Court. March Term, A. D. 1884.

QUIDNICK COMPANY
v.
ZECHARIAH CHAFEE *et als.* } In Equity. No. 2233.

The answer of Zechariah Chafee, trustee, one of the defendants, to the above-entitled bill of complaint.

This defendant, for answer to said bill, saith that he ad-
189 mits the truth of the several allegations and statements therein contained, subject to any additions thereto and explanations thereof hereinafter contained.

That said complainant, Quidnick Company, before the filing of said bill of complaint, had sold all its real estate and manufacturing property and had given up its business of manufacturing preparatory to the liquidation and winding up of its affairs and to dividing out the proceeds of such sales and all its other property among its several stockholders.

That said dividend, so declared by said Quidnick Company as alleged in said bill, is a stock dividend in liquidation, and was declared in pursuance of such plan for the liquidation of its affairs above set forth, and that said dividend is payable out of the funds derived as aforesaid from said sales.

That the A. & W. Sprague Manufacturing Company is and on, prior to, and since the first day of November, A. D. 1873, was and has been a manufacturing corporation created by the General Assembly of said State of Rhode Island, and as such, with its members and stockholders, subject to the provisions of chapter 128 of the Revised Statutes and of chapter 142 of the General Statutes of this State.

That on and prior to said first day of November, A. D. 1873, the said A. & W. Sprague Manufacturing Company had become embarrassed in its business and obliged to suspend payment of its debts; that it was then indebted to a very large number of banks and persons, in and out of this State, in very large amounts; that Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague were then, and since the organization of said A. & W. Sprague Manufacturing Company, in the year 1865, had been, large and principal members and stockholders of said company, and as such, under said statutes in such cases provided, were and ever since have been and still are severally and individually liable for all its debts, said company never having made or filed any of the statements or returns required by said statutes to exempt its members and stockholders from such personal liability; that said Amasa Sprague, William Sprague, Fanny Sprague, Mary Sprague, and said A. & W. Sprague Manufacturing Company were also, on and before said first day of

November, 1873, and thereafter to the times of the transfers by them hereinafter stated, large and the principal stockholders in the said Quidnick Company, together holding 4,022 of the 4,349 shares, the whole of the capital stock of said Quidnick Company now outstanding, the remaining 327 shares being held by the estate of Edwin Hoyt, deceased, of which estate Claudius B. Farnsworth is administrator, with the will annexed, in Rhode Island.

190 That in consequence of the embarrassments and suspension aforesaid of said A. & W. Sprague Manufacturing Company it and its members and stockholders aforesaid were obliged to ask from their creditors an extension of time for payment of their debts, and the negotiations with their creditors that ensued finally resulted in the said corporation and its said stockholders executing and delivering to this defendant, the said Zechariah Chafee, the trust mortgage and conveyance of its and their estates, bearing date on said first day of November, A. D. 1873, a copy of which, marked Exhibit A, is hereto annexed and made a part of this answer.

That said A. & W. Sprague Manufacturing Company and said other grantors or parties of the first part in said trust conveyance were then, respectively, holders and owners of large amounts of the capital stock of various banks and other corporations, including said Quidnick Company as aforesaid, and also including sundry manufacturing corporations which were largely indebted or insolvent, and in which the stockholders were also personally liable for the corporation debts under the statutes aforesaid, so that, under the advice of eminent counsel, both here and from the city of Boston, called in consultation by or in behalf of the creditors, that it was or might be doubtful how far the trustee, if he took a conveyance of all such stocks, might become also personally liable for such corporation debts, the clause was inserted in said conveyance, viz: "Excepting from this conveyance all shares of capital stock in any and every corporation, wherever located, belonging to any or either of the parties of the first part," and inserting the following agreement and covenant, viz: "The same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security, to secure the performance of the condition of this instrument," as by reference hereby had to said conveyance will more fully appear, thus enabling said Chafee, as trustee thereunder, at any time or from time to time, to call for the transfer to himself, as trustee and as security for the creditors under said trusts, of such stocks as he should find of sufficient value to justify his taking the same; that, accordingly, the next day after the delivery to him of said trust conveyance, he did call upon said parties of the first part, grantors therein, to transfer to him their shares aforesaid in said Quidnick Company, and said parties thereupon, on or about the second day of December, 1873, respectively, made and executed to this defendant upon the stock transfer book of said Quidnick Company transfer of the shares of stock in said company then held by them, respectively, in the following form, viz:

191 "For value received I, —— ——, hereby sell and transfer, by way of pledge and collateral security, to Zechariah Chafee,

of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1, — shares of the capital stock of the Quidnick Company."

The said Amasa and William thus transferring to this defendant each 1,082 shares, and the said Fanny Sprague 802 shares, and the said Mary Sprague 601 shares, and the said A. & W. Sprague Manufacturing Company 455 shares, thus together making the 4,022 shares aforesaid, and which are of the par value of one hundred dollars per share; that subsequently said parties, on or about the twenty-second day of December, 1873, by transfer duly made and executed by them, respectively, upon said stock transfer book of said Quidnick Company transferred and assigned their respective remaining right, title, and interest and equity of redemption in said shares so held by them, respectively, as follows: The said Amasa Sprague, William Sprague, Mary Sprague, and said A. & W. Sprague Manufacturing Company each transferred to the said Fanny Sprague their remaining right, title, and interest in their respective shares, in trust for the equal benefit of all their respective creditors, and the said Fanny Sprague in like manner transferred her remaining right, title, and interest in her shares aforesaid to the said Mary Sprague, in trust for the equal benefit of all her creditors, all which, by reference to said transfer book of said Quidnick Company, to which, for the transfers aforesaid, when produced in court, this defendant craves leave to refer as parts of this answer, will fully appear, thereby, respectively, recognizing their several previous transfers, above set forth, to this defendant; and this defendant avers that this title so vested in said Fanny and Mary Sprague, as assignees as above set forth, afterwards, by decrees of this honorable court, entered on the 25th day of August, A. D. 1883, became vested in said defendant, Gorham P. Pomroy, and further shows that the said title of said Pomroy, so subsequent in time as above shown to the title of this defendant, Chafee, and to said transfers to said Chafee, was and is subject to all the rights of said Chafee and the creditors under his said transfers; and said Amasa Sprague, William Sprague, and said A. & W. Sprague Manufacturing Company afterwards, by deeds dated April 6, 1874, respectively, assigned all their estates to this defendant for the benefit of all their creditors, to which deeds, in court to be produced, this defendant also refers as parts of
192 this answer; and this defendant further shows that the great body of the creditors provided for in said trust conveyance dated Nov. 1, 1873, came in under it and became parties to it and accepted the mortgage notes under said deed, the aggregate amount of the mortgage notes thus issued being upwards of eight million dollars, originally issued to four hundred and forty-nine creditors, widely scattered through different parts of the country, though by whom all of the same are now held this defendant is unable to say, as he has not been kept fully informed of the sales and transfers of the same, and which, as this defendant believes and avers, constitute the great body of the original indebtedness of said parties, grantors in the said trust conveyance and transfers of stock

aforesaid; and this defendant further avers that the conditions of the said trust deed of mortgage have long since been broken by the non-payment of the semi-annual interest on said mortgage notes since the first day of January, A. D. 1876, and by the non-payment by said grantors in said trust deed of mortgage of the principal sum or any part thereof of said notes; that all the estate, real and personal, which passed under said trust mortgage, Exhibit "A," hereinbefore referred to, is entirely insufficient to pay the debts secured by said trust mortgage, and that a large portion of the same has already been sold, and that the proceeds thereof, together with what can possibly be derived from the remaining portion, will be entirely insufficient for the payments of the debts aforesaid secured under said trust mortgage, and that the whole of any and all sums of money that are or may become distributable upon or in respect of said 4,022 shares of stock of said Quidnick Company will be required to pay the said debts, and will still leave a deficiency for the full payment of said debts; and this defendant says that he does claim that, under and by virtue of his said title to said 4,022 shares of said stock, as hereinbefore set forth, he is entitled to receive the said sum of money and any other sums of money now or hereafter to be distributed upon and in respect of said 4,022 shares of stock.

And this defendant prays that by the decree of this honorable court he may be declared to be entitled to receive from said complainant said sums of money so to be distributed upon and in respect of said 4,022 shares of said capital stock of said Quidnick Company, and that said complainant may be ordered to pay over the same to him, and for such other and further relief in the premises as the nature of the case shall require and as to your honors shall seem meet.

193 And hereby submits to a decree to interplead with the other respondents in said cause as to the matters in controversy therein.

ZECHARIAH CHAFEE.

Witness:
J. W. PERRY.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHAS. HART,
BENJ. F. THURSTON,
Solicitors for Defendant, Z. Chafee.

STATE OF SOUTH CAROLINA, }
County of Charleston, } *ss:*

In the city of Charleston, in said county and State, this seventeenth day of April, A. D. 1884, then and there personally appeared Zechariah Chafee and made oath that the statements and matters contained in the foregoing answer, so far as stated of his own knowl-

of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1, — shares of the capital stock of the Quidnick Company."

The said Amasa and William thus transferring to this defendant each 1,082 shares, and the said Fanny Sprague 802 shares, and the said Mary Sprague 601 shares, and the said A. & W. Sprague Manufacturing Company 455 shares, thus together making the 4,022 shares aforesaid, and which are of the par value of one hundred dollars per share; that subsequently said parties, on or about the twenty-second day of December, 1873, by transfer duly made and executed by them, respectively, upon said stock transfer book of said Quidnick Company transferred and assigned their respective remaining right, title, and interest and equity of redemption in said shares so held by them, respectively, as follows: The said Amasa Sprague, William Sprague, Mary Sprague, and said A. & W. Sprague Manufacturing Company each transferred to the said Fanny Sprague their remaining right, title, and interest in their respective shares, in trust for the equal benefit of all their respective creditors, and the said Fanny Sprague in like manner transferred her remaining right, title, and interest in her shares aforesaid to the said Mary Sprague, in trust for the equal benefit of all her creditors, all which, by reference to said transfer book of said Quidnick Company, to which, for the transfers aforesaid, when produced in court, this defendant craves leave to refer as parts of this answer, will fully appear, thereby, respectively, recognizing their several previous transfers, above set forth, to this defendant; and this defendant avers that this title so vested in said Fanny and Mary Sprague, as assignees as above set forth, afterwards, by decrees of this honorable court, entered on the 25th day of August, A. D. 1883, became vested in said defendant, Gorham P. Pomroy, and further shows that the said title of said Pomroy, so subsequent in time as above shown to the title of this defendant, Chafee, and to said transfers to said Chafee, was and is subject to all the rights of said Chafee and the creditors under his said transfers; and said Amasa Sprague, William Sprague, and said A. & W. Sprague Manufacturing Company afterwards, by deeds dated April 6, 1874, respectively, assigned all their estates to this defendant for the benefit of all their creditors, to which deeds, in court to be produced, this defendant also refers as parts of
192 this answer; and this defendant further shows that the great body of the creditors provided for in said trust conveyance dated Nov. 1, 1873, came in under it and became parties to it and accepted the mortgage notes under said deed, the aggregate amount of the mortgage notes thus issued being upwards of eight million dollars, originally issued to four hundred and forty-nine creditors, widely scattered through different parts of the country, though by whom all of the same are now held this defendant is unable to say, as he has not been kept fully informed of the sales and transfers of the same, and which, as this defendant believes and avers, constitute the great body of the original indebtedness of said parties, grantors in the said trust conveyance and transfers of stock

aforesaid; and this defendant further avers that the conditions of the said trust deed of mortgage have long since been broken by the non-payment of the semi-annual interest on said mortgage notes since the first day of January, A. D. 1876, and by the non-payment by said grantors in said trust deed of mortgage of the principal sum or any part thereof of said notes; that all the estate, real and personal, which passed under said trust mortgage, Exhibit "A," hereinbefore referred to, is entirely insufficient to pay the debts secured by said trust mortgage, and that a large portion of the same has already been sold, and that the proceeds thereof, together with what can possibly be derived from the remaining portion, will be entirely insufficient for the payments of the debts aforesaid secured under said trust mortgage, and that the whole of any and all sums of money that are or may become distributable upon or in respect of said 4,022 shares of stock of said Quidnick Company will be required to pay the said debts, and will still leave a deficiency for the full payment of said debts; and this defendant says that he does claim that, under and by virtue of his said title to said 4,022 shares of said stock, as hereinbefore set forth, he is entitled to receive the said sum of money and any other sums of money now or hereafter to be distributed upon and in respect of said 4,022 shares of stock.

And this defendant prays that by the decree of this honorable court he may be declared to be entitled to receive from said complainant said sums of money so to be distributed upon and in respect of said 4,022 shares of said capital stock of said Quidnick Company, and that said complainant may be ordered to pay over the same to him, and for such other and further relief in the premises as the nature of the case shall require and as to your honors shall seem meet.

193 And hereby submits to a decree to interplead with the other respondents in said cause as to the matters in controversy therein.

ZECHARIAH CHAFEE.

Witness:
J. W. PERRY.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHAS. HART,
BENJ. F. THURSTON,
Solicitors for Defendant, Z. Chafee.

STATE OF SOUTH CAROLINA, }
County of Charleston, } *ss:*

In the city of Charleston, in said county and State, this seventeenth day of April, A. D. 1884, then and there personally appeared Zechariah Chafee and made oath that the statements and matters contained in the foregoing answer, so far as stated of his own knowl-

edge, are true, and so far as stated upon information and belief are true to the best of his knowledge, information, and belief.

Before me—

[L. S.] T. S. HAYWARD, JUN.,
Notary Public.

Final Decree. (*Filed May* 1, 1884.)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } *sc.:*
Providence, }

Supreme Court. March Term, A. D. 1884.

QUIDNICK COMPANY }
vs. } Equity, 2233.
ZECHARIAH CHAFEE, Trustee, *et al.* }

This cause came on to be heard before the court upon the bill and the answers of the respondents, Zechariah Chafee, assignee and trustee, and Gorham P. Pomroy, assignee; and it appearing to the court that Thomas C. Greene, receiver of the Franklin Insti-
194 tution for Savings, and Evan Randolph, two of the respondents in said cause, have wholly neglected to file any answers in said cause, as by law required, it is now, upon motion of the complainant, no person appearing to object thereto—

Ordered, adjudged, and decreed by the court that said bill of complaint be taken as confessed against said Thomas C. Greene, receiver of the Franklin Institution for Savings, and against said Evan Randolph; and, upon like motion of the complainant, after hearing the bill of complaint in said cause, the same being sworn to by the complainant, it is further ordered, adjudged, decreed, and declared by the court that the said Thomas C. Greene, receiver of the Franklin Institution for Savings, has no claim, right, title, or interest in the said two thousand six hundred and nineteen (2,619) shares of the capital stock of the said Quidnick Company in said bill set forth, and has no right, title, or interest in the said dividend declared thereon, as set forth in said bill, or any part thereof, and he, the said Thomas C. Greene, receiver as aforesaid, and all persons claiming by, through, or under him are hereby perpetually enjoined from asserting any claim thereto and from commencing any actions or suits to recover said dividends or any part thereof against the complainant; and it is also further ordered, adjudged, decreed, and declared by the court that the said respondent, Evan Randolph, has no claim, right, title, or interest in or to the said four thousand and twenty-two (4,022) shares of the capital stock of said Quidnick Company in said bill set forth, and has no right, title, or interest in the said dividend declared thereon, as set forth in said bill, or any part thereof, and he, the said Evan Randolph, and all persons claiming by, through, or under him are hereby perpetually enjoined from asserting any title or claim thereto and from commencing any action or suits against the said complainant to recover said dividends or any part thereof.

And, upon motion of the complainant, it is further ordered, adjudged, and decreed by the court that the said respondents, Zechariah Chafee, assignee and trustee, as in his answer set forth, and Gorham P. Pomroy, assignee, as in his answer set forth, do interplead with each other as to the controversies between them, as set forth in their said answers.

Entered as the decree of the court this 34th day of the March term, A. D. 1884 (May 1, 1884).

By order:

CHARLES BLAKE, *Clerk.*

Enter:

J. H. STINESS, *J. S. C.*
G. M. CARPENTER, *J.*

195 *Order to Deposit Money in Registry.* (*Filed May* 7, 1884.)

PROVIDENCE, *sc:*

Supreme Court. March Term A. D. 1884.

QUIDNICK COMPANY
vs.
ZECHARIAH CHAFEE, Trustee, &c., *et als.* } In Equity. No. 2233.

In the above cause, upon motion of Zechariah Chafee, trustee and assignee, defendant therein, it is, upon this 7th day of May, A. D. 1884, ordered that said complainant, Quidnick Company, deposit forthwith in the registry of this court the sum of ($80,440.00) eighty thousand four hundred and forty dollars, being the amount of the said dividend on said 4,022 shares of the capital stock of said complainant, Quidnick Company, declared due and payable on and after the 13th day of March, A. D. 1884, as alleged in said bill; and the clerk is hereby ordered to deposit said sum of money in the First National Bank of Providence to the credit of the above-entitled case.

Entered as the decree of Court May 7, 1884.

By order:

CHARLES BLAKE, *Clerk.*

Agreement for the Appointment of a Master. (*Filed May* 7, 1884.)

PROVIDENCE, *sc:*

Supreme Court. March Term, 1884.

QUIDNICK COMPANY
v.
Z. CHAFEE *et al.* } Equity, 2233.

In the above-entitled cause it is agreed that the said cause be referred to Richard B. Comstock, as master, to hear and report to the court all the evidence in said cause.

C. FRANK PARKHURST,
Sol'r for Z. Chafee, Trustee and Assignee.
C. H. PARKHURST,
Sol'r for G. P. Pomroy, Assignee.

196 It is ordered that a commission issue to Richard B. Comstock as per above agreement.

Entered as decree of court May 7, 1884.

By order:

HERBERT ALMY,
Assistant Clerk.

Issue. (*Filed May* 7, 1884.)

PROVIDENCE, *sc:*

The Supreme Court. March Term, 1884. Equity, 2233.

Is the defendant, Zechariah Chafee, assignee and trustee, as set forth in his answer, entitled to the dividend upon the 4,022 shares of the capital stock of the Quidnick company described in the bill of complaint, or is the defendant, Gorham P. Pomroy, assignee, entitled to the same?

Assented to.

C. H. PARKHURST,
Sol. for Def't Pomroy.

C. FRANK PARKHURST,
Sol. for Z. Chafee, Trustee, &c.

Final Decree. (*Filed June* 2, 1884.)

PROVIDENCE, *sc:*

Supreme Court. March Term, A. D. 1884.

QUIDNICK COMPANY
v.
ZECHARIAH CHAFEE *et als.* } In Equity. No. 2233.

This cause came on to be heard before the full court, at the above term, upon the bill and answers of the respondents, Zechariah
197 Chafee, trustee and assignee, and Gorham P. Pomroy, assignee, and upon the evidence duly reported to the court by the master in this cause heretofore duly appointed, commissioned, and sworn; and said respondents having, by decree entered heretofore in this cause on the 1st day of May, A. D. 1884, been ordered to interplead with each other as to the controversies between them as set forth in their answers, and was argued by counsel for said respondents; and thereupon, upon consideration thereof, it is ordered, adjudged, determined, and decreed—

First. That said Gorham P. Pomroy, assignee as aforesaid, has such claim, right, title, and interest in and to said 4,022 shares of the capital stock of said Quidnick Company, as is set forth in the answer of said Gorham P. Pomroy, except that the right, title, and interest of said Pomroy in and to said shares of stock is subject to all the rights of said respondent, Zechariah Chafee, and of the creditors under the trusts of said Chafee by virtue of said Chafee's title

as pledgee, as set forth in the answer of said Chafee, and that the said Gorham P. Pomroy has no right, title, or interest in the said dividend declared thereon, as set forth in said bill, or in any part thereof; and he, the said Gorham P. Pomroy, assignee as aforesaid, and all persons claiming by, through, or under him are hereby perpetually enjoined from asserting any claim to said dividend and from commencing any actions or suits to recover said dividends or any part thereof against the complainant.

Second. That the said respondent, Zechariah Chafee, by virtue of his title as pledger, as set forth in his said answer, to said 4,022 shares of the capital stock of said complainant, Quidnick Company, is entitled, as the lawful owner thereof, to receive the dividends thereon declared, as set forth in said bill and answers, being the sum of eighty thousand four hundred and forty ($80,440) dollars, heretofore deposited in the registry of this court, with the interest accrued thereon.

Third. It is further ordered, adjudged, and decreed that all the costs of this suit to be taxed by the clerk be paid out of the fund now in the registry of the court to the solicitor of the complainant, being $149.80.

Fourth. And the clerk of this court is hereby ordered forthwith to pay over to said Zechariah Chafee, pledgee as aforesaid, said sum of eighty thousand four hundred and forty ($80,440) dollars, with the interest accrued thereon, less the sum of eighty dollars, commissions, thereon, and said costs.

198 Entered as the decree of court 55th day, M. T., 1884 (June 2, 1884).

By order: CHARLES BLAKE, *Clerk.*

PROVIDENCE, *June* 2, 1884.

Received of Charles Blake, clerk, $229.80 (two hundred and twenty-nine dollars and eighty cents) from above-named fund, being costs, $149.80; clerk's commission, $80.

C. H. PARKHURST,
Sol. for Quidnick Co.

PROVIDENCE, *June* 2, 1884.

Received of Charles Blake, clerk, $80,377.70, being the whole fund, with interest on the amount $229.80, receipted for above by C. H. Parkhurst, solicitor for Quidnick Co. in case 2233, as directed in the aforewritten decree.

Z. CHAFEE, ETC.,
By C. FRANK PARKHURST,
His Solicitor.

Received of C. H. Parkhurst $80 commission (as per agreement) and $19.95 tax and recording, June 2, 1884.

C. B., *C'k.*

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

Answer of Claudius P. Farnsworth. (*Filed August* 4, 1884.)

Claudius B. Farnsworth, as he is administrator, with the will annexed, of the estate of Edwin Hoyt, in the State of Rhode Island, for answer to such and so much of the plaintiff's supplemental bill and the original bill therein referred to as he is advised he ought to make answer unto, reserving to himself all manner of exception to the same, says:

1. That on the 28th day of November, A. D. 1882, he was appointed by the municipal court of the city of Providence to be administrator, with the will annexed, of the estate of Edwin
199 Hoyt, late of the city of New York, deceased, and then took upon him that trust in the manner provided by law.

2. That said Edwin Hoyt, at the time of his decease, was owner of three hundred and twenty-nine shares of the capital stock of the Quidnick Company aforesaid, which shares were personal property in the State of Rhode Island, there to be administered upon, and that they came to the hands of this respondent by virtue of his said appointment.

3. That this respondent, as the holder of said shares, has attended meetings of said company and voted therein, as of right he ought to do, in the execution of his said trust.

4. And he denies that he has combined or confederated with any persons in any unlawful manner respecting the action of said company or as to any of the matters set out by the plaintiff in his bill or supplemental bill.

5. And as to all the other matters set out in the plaintiff's bill and supplemental bill he has no knowledge or information, but he denies that the same are true, and leaves the plaintiff to prove the same in such manner as he may be advised.

6. And he denies that all or any of the matters set out in said bill and supplemental bill entitle the plaintiff to any relief as against the defendant.

Wherefore he prays to be hence dismissed and for his costs.

CLAUDIUS B. FARNSWORTH.

JAMES M. RIPLEY, *Of Counsel.*

Replication. (*Filed September* 26, 1884.)

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of exception, benefit, and advantage of exception which may be had or taken to the manifold insufficiencies of the said joint and several answer of all of said respondents except Zechariah Chafee, and to the manifold insufficiencies of the answer of said Chafee, for replication thereunto says that he will maintain and prove his bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the answers of the said defendants are uncertain, untrue, and insufficient to be

replied unto by this repliant without this, that any other
200 matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

WILLIAM H. BAKER,
BENJAMIN F. BUTLER,
Solicitors for Complainant.

201 *Testimony for Complainant.*

Depositions of witnesses produced, sworn, and examined the eighteenth, twenty-fourth, and twenty-ninth days of November and the ninth day of December, A. D. 1884, at Providence, R. I., under and by virtue of a commission, hereunto attached, issued out of the circuit court of the United States within and for the Rhode Island district, in a suit in equity, now pending in said court, wherein Evan Randolph is complainant and The Quidnick Company and others are respondents, as follows:

AMASA SPRAGUE, of Warwick, in the county of Kent and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Evan Randolph, complainant in said suit, doth depose and say as follows:

Direct examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Amasa Sprague; about 53 years old; Warwick, R. I.; manufacturer—was.

Int. 2. Are you a member of the firm of A. & W. Sprague; and, if yea, how long have you been such and of whom does said firm consist and where is or was said firm doing business?

Ans. I am a member of the firm of A. & W. Sprague; have been a member a great many years—say thirty or forty years. Said firm consists of William Sprague and Amasa Sprague. Said firm was and is doing business in Providence, R. I.

Int. 3. Are you or were you a stockholder in the A. & W. Sprague Manufacturing Company, a corporation incorporated by the General Assembly of Rhode Island; and, if yea, how many shares of stock in said corporation are you or were you the owner of, and how long have you been a stockholder therein?

Ans. I was and am now a stockholder in the A. & W. Sprague Manufacturing Company. I was the owner of about two thousand shares of stock in said corporation, and I have been a stockholder since its organization. It was a corporation created by the State of Rhode Island about 1865.

202 (Last sentence of question objected to on behalf of Z. Chafee, trustee and assignee, on the ground that there is better evidence of the fact inquired of.)

Int. 4. Are you or were you an officer in said corporation; and, if yea, what office do or did you hold and for how long did you hold it?

Ans. I was treasurer of the A. & W. Sprague Manufacturing Company, and I think I have been treasurer of that corporation for about twenty-five years.

Int. 5. You have stated that this corporation was created in 1865. How, then, could it be possible that you should have been treasurer of such corporation for the length of time you stated?

Ans. Well, it is only a matter of record. I made a mistake in the figures; that is all. I have been treasurer of the corporation very nearly as long as it has been created. That is all.

Int. 6. Are you acquainted with Evan Randolph, complainant in this cause; how long have you known him, where does he reside, and of what State is he a citizen?

Ans. I am not acquainted with Evan Randolph and never have seen him; I do not know him; he resides in Philadelphia and is a citizen of Pennsylvania.

Int. 7. Are you acquainted with respondents, Zechariah Chafee, Mary Sprague, Fanny Sprague, William Sprague, Gorham Pomroy, Claudius B. Farnsworth, Charles B. Gould, Stephen Harris, Benjamin B. Knight, and Robert Knight; and, if yea, where do they reside and of what States are they citizens?

Ans. I am acquainted with all of them, and they are residents of the State of Rhode Island, and they are citizens of the State of Rhode Island.

Int. 8. Is the Quidnick Company a corporation, and under the laws of what State was it incorporated, and where is it doing business?

Ans. It is a corporation; it was incorporated by the General Assembly of the State of Rhode Island, and it is doing business in the city of Providence and State of Rhode Island.

Int. 9. Do you know of a company called the Union Company, claimed to be a corporation; and, if yea, in what State does it claim that it was incorporated, and where is said Union Company doing business?

Ans. There is a company doing business called the Union Company; it was incorporated in the State of Rhode Island, and is doing business in the city of Providence and State of Rhode Island.

203 Int. 10. Are you acquainted with Hoyt, Sprague & Company, a firm now or formerly doing business in the city of New York, State of New York; and, if so, are you or were you a member of said firm, and of whom did said firm consist and how long has said firm existed?

Ans. I am acquainted with the firm of Hoyt, Sprague & Company. I was a member of said firm. Said firm consisted of Edwin Hoyt, Nehemiah R. Knight, William B. Greene, Amasa and William

Sprague, and Albert S. Gallup. Said firm has existed, I should think, about fifteen years. I cannot remember the dates.

Int. 11. Do you know whether the complainant, Evan Randolph, had a valid claim against said Hoyt, Sprague & Company? State amount of said claim and time the said accrued, if you know, and whether the same or any part thereof has been paid.

Ans. Yes; he had some acceptances of Hoyt, Sprague & Company. Don't remember amount of claim. I think the same accrued somewhere in the neighborhood of 1873. It has not been paid.

Int. 12. Whether Evan Randolph commenced a suit in the circuit court of the United States for the district of Rhode Island, on the law side thereof, at November term, 1875, of said court, to enforce his claim upon Hoyt, Sprague & Company, against you, among others, as a partner in said firm.

Ans. He did.

Int. 13. Whether said Randolph obtained a judgment in said court at the November term, 1882, thereof, and the United States marshal levied upon all stock in said Quidnick Company owned by you and your brother, William Sprague, on execution upon said judgment and sold said stock under said execution, and that all of said stock was purchased by said Randolph himself.

(Objected to on behalf of defendants generally, on the ground that there is better evidence in the way of record, evidence as to any matter inquired of, and as leading.)

Ans. Yes, sir; that is so.

Int. 14. Whether you know one Horatio N. Waterman, a resident of Rhode Island, and how long have you known him and where does he reside?

Ans. I have known Horatio N. Waterman for forty years. He resides at present at East Greenwich, R. I.

Int. 15. Was he a creditor of the A. & W. Sprague Manufacturing Company; and, if yea, what was the amount of his claim, what was it for, and when did it accrue?

204 Ans. He was a creditor of the A. & W. Sprague Manufacturing Company. I think the amount of Waterman's claim at that time was somewhere about seven or eight thousand dollars, with interest. It was for services rendered, as salary for labor. It was a running account. I think it was running along for several years before the suspension.

Int. 16. You say "at that time." At what time do you mean?

Ans. Some time before the suspension.

Int. 17. Did said Waterman commence suit in the supreme court of Rhode Island, on or about the 21st day of April, 1882, to enforce payment of his claim against the Sprague Manufacturing Company, and did he, at the October term, 1882, of said supreme court, obtain a judgment in said court in his favor against said company?

(Same objection on part of respondents generally as that made to interrogatory 13.)

Ans. He did commence suit and obtain judgment.

Int. 18. Did execution issue on said judgment, and was service thereof made by levying on all the stock of Mary and Fanny Sprague and of the A. & W. Sprague Manufacturing Company in said Quidnick Company, and was all of such stock sold by the sheriff under said execution and all of it purchased by the complainant, Evan Randolph?

(Same objection on part of respondents generally as that made to interrogatory 13.)

Ans. The execution issued on said judgment. Service was made by levying on all said stock. All said stock was sold by the sheriff under said execution, and all of it was purchased by complainant, Evan Randolph.

Int. 19. Were Mary and Fanny Sprague stockholders in the A. & W. Sprague Manufacturing Company, and as such liable for its debts at the time of the levy of said execution issued on the judgment obtained by said Waterman in said supreme court?

(Question objected to as to that part beginning with "and as such liable for its debts," and embracing the remainder of question, on ground that it calls for a statement from the witness of a conclusion of law and not a statement of fact.)

Ans. They was [were] stockholders in the A. & W. Sprague Manufacturing Company, and liable at that time.

Int. 20. Whether, at any time within six years from the commencement of his said suit, said Waterman applied to you, as the treasurer of the said Sprague Manufacturing Company, and
205 demanded payment of his claim against said A. & W. Sprague Manufacturing Company, and whether you promised him, as treasurer of said corporation, to pay him his said claim.

(Objected to as immaterial, irrelevant, and leading.)

Ans. I had frequent talks with Mr. Waterman before and after the suspension. Before the suspension I had a talk with him in regard to his money that was due him. He said that he did not need the money just then, and if the corporation would give him interest he would let it remain. After the suspension he demanded the payment of his claim several times. I told him it would be all right and he should be paid; and he ought to be paid, too.

Int. 21. What do you mean by the suspension?

Ans. I mean the failure and assignment of the A. & W. Sprague Manufacturing Company. The interviews with Waterman were about 1871.

Int. 22. Since the first of December, 1873, have you had any interviews with said Waterman relative to payment of his said claim? And, if yea, state what occurred at said interview.

(Objected to as immaterial and irrelevant.)

Ans. I had several interviews with him as to the payment of his claim, and I always told him it would be all right, and that the corporation would see that he was paid. I have had frequent in-

terviews since December 1, 1873, and always told him he should be paid.

Int. 23. Did said Waterman, to your knowledge, ever assent to the pretended trust deed, assigment, or mortgage by way of indenture to Zechariah Chafee claimed to have been made by A. & W. Sprague, Amasa, William, Mary, and Fanny Sprague, and the A. & W. Sprague Manufacturing Company on the first day of December, A. D. 1873? Did he, said Waterman, to your knowledge, ever accept any trust notes issued under said instrument or in any way assent to its validity or bind himself by its terms?

(Objected to on the ground of irrelevancy, immateriality, and also as being leading.)

Ans. He never did.

Int. 24. Did Evan Randolph ever, to your knowledge, assent to said trust deed, mortgage, or assignment claimed to have been made to said Chafee on the first of December, 1873? Did said Randolph ever accept any trust notes issued under said instrument, or in any way assent to its validity or bind himself by its terms?

(Same objection as that made to last interrogatory.)

206 Ans. He never did. He wasn't paying Hoyt, Sprague & Company's debts then.

Int. 25. Whether or not it was contemplated that Hoyt, Sprague & Company should take care of their own indebtedness at the time of the suspension hereinbefore mentioned of the A. & W. Sprague Manufacturing Company and of A. & W. Sprague, about six weeks prior to the alleged making of the said trust deed to said Chafee.

(Objected to as assuming matters not heretofore proved.)

Ans. It was agreed that Hoyt, Sprague & Company and supposed that they should take care of their own indebtedness—that is, Hoyt, Sprague & Company's indebtedness. It was at the time of the suspension, of course.

Int. 26. When did this suspension occur?

Ans. About six weeks before the making and signing of the trust deed. The assignment was made somewhere in July, afterwards.

Int. 27. What trust deed do you refer to?

Ans. I mean the mortgage deed that was signed by Waterman, Nightingale, and Lockwood, November 28, 1873, and afterwards the names of Waterman, Nightingale, and Lockwood scratched out and the name of Zechariah Chafee inserted.

Int. 28. You mean the deed signed by the said Sprague and the said Sprague Manufacturing Company made to those three gentlemen—Lockwood, Nightingale, and Waterman, whom you have named?

Ans. That is what I mean.

Int. 29. After the several purchases of the said Quidnick Company's stock by said Randolph was a certificate for 4,022 shares of said stock issued to him, and were the sheriff's and marshal's deeds to

said Randolph placed on record in the stock transfer book of the Quidnick Company?

(Objected to generally and on the ground that this will not furnish the best evidence as to the matters inquired of, and also as leading.)

Ans. There was such a certificate issued, and it was placed on record in the stock transfer book of the Quidnick Company.

Int. 30. Was there a pretended transfer of all the stock in said Quidnick Company of William, Amasa, Mary, and Fanny Sprague and of the A. & W. Sprague Manufacturing Company made to Zechariah Chafee; and, if so, when?

(Objected to as immaterial, irrelevant, and as assuming matters not proved, and as leading.)

Ans. There was that transfer, and it was made somewhere in the month of December, 1873.

207 Int. 31. How was such transfer made?

Ans. It was made to Zechariah Chafee. It was made on the books of the company.

Int. 32. Was there any delivery of the certificates of stock held by these several parties named to Mr. Chafee? I refer to the Quidnick Company's stock.

(Objected to as inadmissible, irrelvant, as assuming matters not heretofore proved, and as leading.)

Ans. No, sir; never demanded, for one of the parties has the old certificate now.

Int. 33. What became of the old certificates?

Ans. They were in the safe of the A. & W. Sprague Manufacturing Company, where they were always kept.

Int. 34. Had Mr. Chafee made a request in writing to have the stock of the Quidnick Company owned by the said Spragues and the said Sprague Manufacturing Company transferred to him prior to the alleged transfer to him?

Ans. He never did, to my knowledge.

Int. 35. For what purpose was this transfer or pretended transfer of said Quidnick Company's stock owned by said Spragues and said Sprague Manufacturing Company made to said Chafee?

(Objected to on the ground that the purpose for which said transfer was made distinctly appears upon the transfer itself, and that it is not competent for the maker of such transfer to impeach in any way the written instrument or transfer, and generally as calling for evidence that is incompetent and immaterial.)

Ans. These transfers were made to Chafee and the original transfers were left in the book, so that if any creditors should come forward and attach the stock in Chafee's hands, that transfer they could tear out of the book and Mr. Chafee could say that he had no stock; and, on the other hand, if it was attached in the hands of the Spragues those transfers were to be torn out.

Int. 36. Do you mean to say that if this stock were legally transferred to Mr. Chafee that it would be subject to attachment by the creditors of the Spragues or the Sprague Manufacturing Company?

(Objected to on the ground that the question calls for no statement of fact, but for the opinion of the witness on an abstract question of law, and calls for testimony wholly irrelevant and immaterial.)

Ans. That is what the counsel thought at the time.

Int. 37. Was it or not understood at the time of the alleged
208 transfer to Mr. Chafee, and do you or not mean to have it understood from what you have said, that this transfer of the Quidnick Company's stock to Chafee was made for the purpose that if the creditors of the Spragues and Sprague Manufacturing Company should demand Mr. Chafee's sale of said stock, and the application of proceeds to the payment of the indebtedness of the Spragues and A. & W. Sprague Manufacturing Company, that he could say that no transfer of any such stock had ever been made to him, and, on the other hand, if a creditor or creditors of said Spragues or Sprague Manufacturing Company should attach said stock, that said Spragues could say that there had been a transfer of all said stock made to said Chafee, and this with a view to prevent creditors of said Spragues and said Sprague Manufacturing Company from getting possession of said Quidnick Company's stock or any benefit or advantage therefrom?

(Objected to for reasons stated in objection to Int. 35, and also as leading, irrelevant, and generally incompetent.)

Ans. That is just what I mean. The transaction was made for the purpose of covering up the stock and keeping it away from creditors.

Int. 38. Was not all of said stock excepted from the operation of said pretended trust deed, assignment, or mortgage of December 1, 1873, to said Chafee?

(Objected to on the ground that the deed is the best evidence.)

Ans. It was excepted.

Int. 39. Subsequently were these transfers by you of 1,082 shares, by William Sprague of 1,082 shares, by Mary Sprague of 601 shares, and by the A. & W. Sprague Manufacturing Company of 455 shares of stock in the said Quidnick Company to Fanny Sprague, in trust, and of 802 shares of said stock by Fanny Sprague to Mary Sprague, in trust, and about when did these several transfers occur?

(Objected to on the ground that the testimony of witness is not the best evidence of these transfers.)

Ans. The transfers was made for the purpose of making it more secure toward keeping it away from the creditors. They were made some time in December, 1873. The stock book will tell; it is only a matter of record.

(Objection made to words of this answer from words "for the

purpose of" to and including the word "creditors," on the ground that they are not responsive to the question.)

Int. 40. For what purpose were those several transfers of Quidnick Company's stock made?

209 (Objected to for the reason that the transfers themselves show the purpose for which they were made, and that it is not competent for one of the makers of the transfers to impeach his own transfer.)

Ans. To keep it out of the reach of the creditors.

Int. 41. Do you recollect anything about certain assignments by way of indenture made by yourself, by William Sprague, A. & W. Sprague, and the A. & W. Sprague Manufacturing Company to Zechariah Chafee, all dated April 6, 1874? Were such assignments made, and when?

Ans. They were made, I think, in July, 1874.

Int. 42. Do you mean to say that said assignments were not made on the day when they purport to be dated?

Ans. I am rather uncertain about it, whether it was in July or April.

Int. 43. Do you recollect anything about the institution of proceedings in bankruptcy in the United States district court in the district of Rhode Island prior to making said assignments against yourself, William Sprague, A. & W. Sprague, A. & W. Sprague Manufacturing Company, Fanny Sprague, and Mary Sprague; and, if yea, were those proceedings prosecuted to final decree?

Ans. There was nothing of the kind commenced against Fanny and Mary Sprague, but there was proceedings commenced against William Sprague, Amasa Sprague, A. & W. Sprague, and A. & W. Sprague Manufacturing Company. Proceedings in bankruptcy were commenced by the National Bank of Commerce of Providence, and they agreed to withdraw their action, provided we would make the assignment. We made the assignment and they withdrew.

Int. 44. Whether any other person, company, or corporation other than said National Bank of Commerce commenced proceedings in bankruptcy against the parties named.

Ans. It was strongly talked of by creditors, but I don't remember any action taken except by the Bank of Commerce.

Int. 45. Were not all the assignments dated April 6, 1874, made in consequence of the institution of proceedings in bankruptcy by said National Bank of Commerce and the agreement to discontinue such proceedings if such assignment were made?

Ans. That was the arrangement.

Int. 46. Was there or has there been any conspiracy or collusion between yourself, William Sprague, Fanny Sprague, Mary
210 Sprague, and the complainant, Evan Randolph, or between either of those parties and said Randolph, to your knowledge, whereby this present suit was brought and prosecuted for the purpose and with the intent of enabling you and the other Spragues mentioned or either of them, in the event of success in this suit, to

defraud your and their creditors of their rights to said 4,022 shares of Quidnick Company stock or to otherwise defraud your or their creditors?

Ans. No, sir.

Int. 47. Was the complainant, Evan Randolph, induced or instigated to bring any suit or action in law or in equity, or to purchase the said stock in the Quidnick Company to aid you or the other Spragues hereinbefore mentioned or the A. & W. Sprague Manufacturing Company to cheat and defraud your and their creditors.

Ans. No, sir.

Int. 48. Was the certificate of stock issued by William Sprague, president of the Quidnick Company, to Evan Randolph, the complainant, transferring to him 4,022 shares of the Quidnick Company stock, issued with a fraudulent purpose and with the intent to cheat and defraud your creditors or the creditors of the Spragues hereinbefore mentioned or the creditors of said A. & W. Sprague Manufacturing Company?

Ans. Not that I know anything about.

Int. 49. Do you know anything about a meeting held by stockholders in said Quidnick Company at which Evan Randolph was elected president and J. Cooke Longstreth treasurer of said company?

(Objected to, if the question is intented to call for any action on the part of the stockholders of the Quidnick Company, upon the ground that any action of the stockholders of said company is by law a matter of record and should be proved by such record.)

Ans. Yes; there was a meeting of that kind. They were elected at this meeting. I think the meeting was held some time in April, 1883.

Int. 50. Do you know of a meeting held in the city of Providence at which it is claimed the respondents, Harris and Gould, were elected as president and treasurer of said Quidnick Company; and, if yea, do you know who were present and voted as stockholders of said corporation?

Ans. I don't know anything about it.

Int. 51. Do you know whether, on the first day of September, 1883, said respondent, Pomroy, held a certificate for 4,022 shares of Quidnick Company stock, and said respondent, Farnsworth, administrator, with the will annexed, of Edwin Hoyt, deceased, held a certificate for 327 shares of said Quidnick Company stock or any proxy or proxies thereof, whereby they were entitled to vote for the removal and election of officers of said corporation?

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Ans. No. I know nothing about it.

Int. 52. Who owned the stock of the Quidnick Company on the second day of December, 1873?

Ans. It was owned by the original stockholders, William Sprague, Mary Sprague, Fanny Sprague, Amasa Sprague, the estate of Emanuel Rice, and the Hoyt children.

Int. 53. Do you know how many shares there were?

Ans. Five thousand all together.

Int. 54. Do you know anything about the purchase of a certain

part of this Quidnick Company stock, or a certain number of these shares, by the Quidnick Company itself? If so, state, if you know, who purchased such stock and under what circumstances said stock was purchased.

(Objected to on the ground that the purchase and sale of the stock to which the question relates is in no way involved in the present suit, and is therefore wholly irrelevant and immaterial.)

Ans. There was the Hoyt children stock purchased and the stock of the heirs of Emanuel Rice. It was purchased by Mr. Chafee.

Int. 55. Who were the officers of the A. & W. Sprague Manufacturing Company on the first of September, 1873?

Ans. William Sprague was president and Amasa Sprague was treasurer.

Int. 56. Who was president of the Quidnick Company at the time of the issue of the certificate of said 4,022 shares of the Quidnick Company stock to said complainant, Evan Randolph?

Ans. William Sprague.

Int. 57. Is Mrs. Mary Sprague now living; and if yea, what is her age?

Ans. Mrs. Mary Sprague is now living, and was 84 years old last May, I think.

Int. 58. Is she at present able to testify in this cause?

Ans. Just at this present time she is very delicate and will not be able to testify.

Int. 59. Is Mrs. Fanny Sprague now living?

Ans. Mrs. Fanny Sprague has been dead over a year.

Int. 60. Who is the administrator on her estate?

Ans. William Sprague.

212 Cross-examination by C. FRANK PARKHURST, Esq.:

Interrogatory 1. Where is the said Mary Sprague now living?

Answer. I think she is living in New York now.

Int. 2. With whom?

Ans. I think with some of her people there.

Int. 3. Who do you mean by some of her people?

Ans. Her connections. She was to have gone on to Mrs. Lee.

AMASA SPRAGUE.

Subscribed by said Amasa Sprague in my presence this twenty-fourth day of November, A. D. 1884.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Deposition of Henry Pitman.

HENRY PITMAN, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Evan Randolph, complainant in said suit, doth depose and say as follows:

Direct examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Henry Pitman; age, 61 years; residence, Providence, R. I.; occupation, clerk of United States circuit court.

Int. 2. How long have you been clerk of said court?

Ans. Thirty years.

Int. 3. Have you with you all the original papers on file in said court in law case of Evan Randolph *vs.* William Sprague and others?

Ans. I have.

Int. 4. Will you examine the papers which I now hand you and compare them with the papers in your possession and state whether the papers I hand you are true copies of the processes and proceedings in said court touching the said suit of said Randolph, so far as it relates to the attachment and sale under execution upon the judgment rendered by said court in said cause of the stock in the Quidnick Company owned by William and Amasa Sprague?

Ans. I have, and they are true copies, I believe, so far as they relate to the proceedings in said court touching the said suit of said Randolph, so far as it relates to the attachment and sale under
213 execution upon the judgment rendered by said court in said cause of the stock of the Quidnick Company owned by William and Amasa Sprague.

Int. 5. Will you file such copies certified by you as an exhibit to your deposition?

Ans. I will.

The copies of papers referred to in Int. 5 are hereunto annexed, marked Exhibit 1.

Int. 6. Have you with you the original drafts and acceptances signed by Hoyt, Sprague & Company, upon which said judgment was rendered?

Ans. I have nine original drafts and acceptances signed by Aborn Levis and accepted by Hoyt, Sprague & Company, which, I presume, are the drafts sued upon in said case.

Int. 7. Will you at your earliest convenience make certified copies of all of these drafts and acceptances and hand them to the examiner taking your deposition as Exhibits 2, A, B, C, D, E, F, G, H, I, to be annexed thereto?

Ans. I will.

The copies referred to in Int. 7 are hereunto annexed, marked as stated in the said interrogatory.

I. H. SOUTHWICK, JR., *Examiner.*

HENRY PITMAN.

Subscribed by said Henry Pitman in my presence this twenty-ninth day of November, A. D. 1884.

ISAAC H. SOUTHWICK, JR., *Examiner.*

214 EXHIBIT 1.

(Pages 45 to 74, inclusive.)

Referred to by Henry Pitman in his answer to interrogatory 5 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

Writ.

DISTRICT OF RHODE ISLAND, *sc:*

The President of the United States of America to the marshal of said district or to his deputy, Greeting:

We command you to summon William Sprague, of South Kingston, in the county of Washington and State of Rhode Island, a citizen of said State of Rhode Island; Amasa Sprague, of Cranston, in the county of Providence, in said State, a citizen of said State of Rhode Island; William Brenton Greene, of the city and county of Newport, in said State, a citizen of the State of Rhode Island; Albert S. Gallup and Nehemiah Knight, both of the city and county of New York, citizens of the State of New York, surviving partners of the firm of Hoyt, Sprague & Company, a firm formerly doing business in said city of New York, consisting of the above-named defendants and Edwin Hoyt, late a citizen of said State of New York, deceased, merchants, *alias* gentlemen, and all citizens of the United States (if they may be found within your precinct), to answer the complaint of Evan Randolph, of the city and county of Philadelphia and a citizen of the State of Pennsylvania and a citizen of the United States, at the next circuit court to be holden at Providence, within and for the district of Rhode Island, on the fifteenth day of November next ensuing the date hereof, in an action of the case, for that the defendants have not kept and performed their promises to the plaintiff made, but have broken the same, as by declaration to be filed in court will be fully set forth, to the damage of the plaintiff forty thousand dollars. Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-third day of October, in the year 1875.

HENRY PITMAN, *Clerk.*

215 RHODE ISLAND DISTRICT, *sc:*

PROVIDENCE, *October* 25, 1875.

I have this day, as within commanded, summoned the within-named William Sprague and Amasa Sprague by reading this writ to them in their presence and hearing and delivering to each of them a true and attested copy hereof. No service was made on

Albert S. Gallup or Nehemiah Knight, as they are not residents of this district and could not be found therein.

JAMES H. COGGESHALL,
U. S. Marshal.

UNITED STATES OF AMERICA, } *sc:*
District of Rhode Island, }

In the city of Newport, in said district of Rhode Island, October 26, A. D. 1875.—I have this day summoned the within-named William Brenton Greene, as within commanded, by leaving an attested copy of this writ at his last and usual place of abode in said city of Newport, the said defendant not *by* being by me personally to be found within said district.

GEO. MANCHESTER,
Deputy U. S. Marshal.

Writ of Mesne Process.

DISTRICT OF RHODE ISLAND, *sc:*

The President of the United States of America to the marshal of said district or to his deputy, Greeting:

On this writ of mesne process we command you to attach the goods and chattels and real estate of William Sprague, of South Kingston, in the county of Washington and State of Rhode Island, being a citizen of said State of Rhode Island; Amasa Sprague, of Cranston, in the county of Providence, and a citizen of said State of Rhode Island; William Brenton Greene, of the city and county of Newport and a citizen of the State of Rhode Island, and Albert S. Gallup and Nehemiah Knight, both of the city and county of New York and citizens of the State of New York, surviving partners of the firm of Hoyt, Sprague & Company, a firm formerly doing business in said city of New York, consisting of the above-named defendants and Edwin Hoyt, late a citizen of said State of New York, deceased, merchants, *alias* gentlemen, and all citizens of the United States (if they may be found in your precinct), and them in
216 safe custody keep, and also to attach their stock or shares in any banking association or incorporated company to the value of forty thousand dollars, and to summon the said William Sprague, Amasa Sprague, William Brenton Greene, Albert S. Gallup, and Nehemiah Knight to answer the complaint of Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, and a citizen of the said State of Pennsylvania, in the case of Evan Randolph against said defendants, now pending in the circuit court at Providence, within and for the district of Rhode Island, forthwith in an action of the case, for that the said defendants have not kept and performed their promises to the plaintiff made, but the same have broken, as by declaration to be filed in court will be fully set forth, to the damage of the plaintiff forty thousand dollars. Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of August, in the year 1882.

HENRY PITMAN, *Clerk.*

I, Richard B. Comstock, agent of the plaintiff named in the within writ, make affidavit and say that the said plaintiff has a just claim against the defendants named in said writ that is due, upon which he expects to recover in said action a sum sufficient to give jurisdiction to the court to which said writ is returnable; that since the contracting of said debt the defendants have been the owners of property or in the receipt of an income which they have refused or neglected to apply towards the payment thereof, though requested by the plaintiff so to do.

RICHARD B. COMSTOCK,
Agent of Plaintiff.

Subscribed and sworn to in Providence, in the county of Providence, this fourteenth day of August, A. D. 1882.

Before me—

EUGENE F. WARNER,
Notary Public.

To the United States marshal, district of Rhode Island:

Please make further service of this writ by attaching all the right, title, and interest of William and Amasa Sprague in the Canonchet estate, and also in any shares of stock of William and Amasa Sprague in the Quidnick Company.

August 17, 1882.

MOWRY & COMSTOCK,
Plaintiff's Attorneys.

217 RHODE ISLAND DISTRICT, *sc:*

PROVIDENCE, *August* 19, 1882.

By virtue of this writ, etc., * * * I also, on the 18th day of August, 1882, at 9 o'clock and 55 minutes in the forenoon, served an attested copy of this writ on William Sprague, president of the Quidnick Company, and at 10 o'clock and 25 minutes in the forenoon I also served an attested copy of this writ on Zechariah Chafee, he claiming to be treasurer of the Quidnick Company, each of said writs having endorsed thereon the date and time of day of such service, thereby attaching all the right, title, and interest of the said William Sprague and the said Amasa Sprague in and to any shares of stock of said Quidnick Company, and have also served said William Sprague and said Amasa Sprague personally with an attested copy of this writ so endorsed.

JAMES H. COGGESHALL,
U. S. Marshal.

Declaration.

United States Circuit Court. November Term, A. D. 1875.

DISTRICT OF RHODE ISLAND, *ss:*

EVAN RANDOLPH
vs.
WILLIAM SPRAGUE *et al.*

Evan Randolph, of the city and county of Philadelphia and a citizen of the State of Pennsylvania, a citizen of the United States, complains of William Sprague, a citizen of Rhode Island, of South Kingston, in the county of Washington, State of Rhode Island, within said district; Amasa Sprague, a citizen of Rhode Island, of Cranston, in the county of Providence, in said State and district of Rhode Island, and William Brenton Greene, a citizen of Rhode Island, of the city and county of Newport, in said State and district of Rhode Island, who, with Edwin Hoyt, a citizen of New York State, late of the city, county, and State of New York, deceased, and Nehemiah Knight and Albert S. Gallup, citizens of the State of New York, both of said city of New York (who, not being residents of or to be found within this district, were not served with the original process in this suit), formerly did business in said city of New York under the firm name of Hoyt, Spragues & Company, all citizens of the United States, summoned by the marshal, in an action of the case—

218 For that one Aborn Levis, on the 3d day of July, 1873, at said New York, to wit, at said Providence, drew an order in writing of that date, by him signed, and directed the same to said Hoyt, Spragues & Company, therein requesting the said Hoyt, Spragues & Company to pay to the order of himself, said Aborn Levis, four months after date, the sum of two thousand five hundred dollars ($2,500), and charge the same to the account of said Aborn Levis, for value received; and the said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Spragues & Company, which the said Hoyt, Spragues & Company then and there accepted to pay, and thereby became liable to pay the same according to the tenor thereof; and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to the plaintiff for value received, by means whereof the said Hoyt, Spragues & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same according to the tenor and effect of said order and of said Hoyt, Spragues & Company's acception [acceptance] thereof and the endorsement thereon; yet, though said four months have elapsed and though often requested, according to the tenor thereof, said Hoyt, Spragues & Company and the defendant have hitherto refused and still refuse to pay the same.

And also for that said Aborn Levis, on said 3d day of July, 1873,

at said New York, to wit, at said Providence, drew a certain other order in writing of that date, by him signed, and directed the same to said Hoyt, Sprague & Company, therein requesting the said Hoyt, Sprague & Company to pay to the order of himself, said Aborn Levis, four months after date, the sum of two thousand five hundred dollars ($2,500) and charge the same to the account of said Aborn Levis, for value received; and the said Aborn Levis thereafterwards, to wit, on the same day presented the same to said Hoyt, Sprague & Company, which the said Hoyt, Sprague & Company then and there accepted to pay, and thereby became liable to pay the same according to the tenor thereof; and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and then and there delivered the same to the plaintiff for value received, by means whereof the said Hoyt, Sprague & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same according to the tenor and effect of said order and of said Hoyt, Sprague & Company's acceptance thereof and endorsement thereon; yet, though said four
219 months have elapsed and though often requested, according to the tenor thereof, said Hoyt, Sprague & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Aborn Levis, on said 3d day of July, 1873, at the city of New York, to wit, at said Providence, drew a certain other order in writing, of that date, by him signed, and directed the same to said Hoyt, Sprague & Company, therein requesting the said Hoyt, Sprague & Company to pay to the order of himself, said Aborn Levis, four months after date, a certain other sum of two thousand five hundred dollars ($2,500) and charge the same to the account of said Aborn Levis, for value received; and the said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Sprague & Company, which the said Hoyt, Sprague & Company then and there accepted to pay, and thereby became liable to pay the same, according to the tenor thereof; and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and then and there delivered the same to the plaintiff for value received, by means whereof the said Hoyt, Sprague & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same, according to the tenor and effect of said order and of said Hoyt, Sprague & Company's acceptance thereof and the endorsement thereon; yet, though said four months have elapsed and though often requested, according to the tenor thereof, the said Hoyt, Sprague & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that the said Aborn Levis, on the 18th day of July, 1873, at said New York, to wit, at said Providence, drew a certain other order in writing, of that date, by him signed, and directed the same to said Hoyt, Sprague & Company, therein requesting said Hoyt, Sprague & Company to pay to the order of himself, said Aborn Levis, four months after date, a certain other sum of two thousand five hundred dollars ($2,500) and charge the same to his

account, for value received; and the said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Sprague & Company, which said Hoyt, Sprague & Company then and there accepted to pay, and thereby became liable to pay the same, according to the tenor thereof; and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to the plaintiff for value received, by means whereof the said Hoyt, Sprague & Company
220 became liable, and in consideration thereof then and there promised the plaintiff to pay the same according to the tenor and effect of said order and of said Hoyt, Sprague & Company's acceptance thereof and the endorsement thereon; yet, though said four months have elapsed and though often requested, according to the tenor thereof, the said Hoyt, Sprague & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Aborn Levis, on the 18th day of July, 1873, at said New York, to wit, at said Providence, drew a certain other order in writing, of that date, by him signed, and directed the same to said Hoyt, Sprague & Company, therein requesting said Hoyt, Sprague & Company to pay to the order of himself, said Aborn Levis, four months after date, a certain other sum of two thousand five hundred dollars ($2,500) and charge the same to his account for value received; and the said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Sprague & Company, which said Hoyt, Sprague & Company then and there accepted to pay, and thereby became liable to pay the same according to the tenor thereof; and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to the plaintiff for value received, by means whereof the said Hoyt, Sprague & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same according to the tenor and effect of said order and of said Hoyt, Sprague & Company's acceptance thereof and the endorsement thereon; yet, though said four months have elapsed and though often requested, according to the tenor thereof, the said Hoyt, Sprague & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Aborn Levis, on the 9th day of August, 1873, at said New York, to wit, at said Providence, drew a certain other order in writing, of that date, by him signed, and directed the same to said Hoyt, Sprague & Company, therein requesting said Hoyt, Sprague & Company to pay to the order of himself, said Aborn Levis, four months after date, a certain other sum of three thousand dollars ($3,000) and charge the same to his account for value received, and the said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Sprague & Company, which said Hoyt, Sprague & Company then and there accepted to pay, and thereby became liable to pay the same according to the tenor thereof; and the
221 said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to

the plaintiff for value received, by means whereof the said Hoyt, Sprague & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same according to the tenor and effect of said order and of said Hoyt, Sprague & Company's acceptance thereof and the endorsement thereon : yet, though said four months have elapsed and though often requested according to the tenor thereof, the said Hoyt, Sprague and Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Aborn Levis, on said 9th day of August, 1873, at said New York, to wit, at said Providence, drew a certain other order in writing of that date, by him signed, and directed the same to said Hoyt, Sprague & Company, therein requesting said Hoyt, Sprague & Company to pay to the order of himself, said Aborn Levis, four months after date, a certain other sum of three thousand dollars ($3,000) and charge the same to his account, for value received ; and the said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Sprague & Company, which the said Hoyt, Sprague & Company then and there accepted to pay, and thereby became liable to pay the same according to the tenor thereof ; and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to the plaintiff for value received, by means whereof said Hoyt, Sprague & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same according to the tenor and effect of said order of said Hoyt, Sprague & Company's acceptance thereof and the endorsement thereon ; yet, though said four months have elapsed and though often requested according to the tenor thereof, the said Hoyt, Sprague & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Aborn Levis, on the 9th day of August, 1873, at said New York, to wit, at said Providence, drew a certain other order in writing of that date, by him signed, and directed the same to said Hoyt, Sprague & Company, therein requesting said Hoyt, Sprague & Company to pay to the order of himself, said Aborn Levis, four months after date, a certain other sum of three thousand dollars ($3,000) and charge the same to his account, for value received ; and the said Aborn Levis thereafterwards, to
222 wit, on the same day, presented the same to said Hoyt, Sprague & Company, which the said Hoyt, Sprague & Company then and there accepted to pay, and thereby became liable to pay the same, according to the tenor thereof ; and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to the plaintiff for value received, by means whereof the said Hoyt, Sprague & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same according to the tenor and effect of said order and of said Hoyt, Sprague & Company's acceptance thereof and the endorsement thereon ; yet, though said four months have elapsed and though often requested, according to the tenor thereof, the said Hoyt,

Spragues & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Aborn Levis, on the said 9th day of August, 1873, at said New York, to wit, at said Providence, drew a certain other order in writing, of that date, by him signed, and directed the same to said Hoyt, Spragues & Company, therein requesting them to pay to himself, said Aborn Levis, four months after date, a certain other sum of three thousand dollars ($3,000) and charge the same to his account, for value received; and the said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Spragues & Company, which said Hoyt, Spragues & Company then and there accepted to pay, and thereby became liable to pay the same, according to the tenor thereof; and said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to the plaintiff for value received, by means whereof said Hoyt, Spragues & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same, according to the tenor and effect of said order and of said Hoyt, Spragues & Company's acceptance thereof and the endorsement thereon; yet, though said four months have elapsed and though often requested, said Hoyt, Spragues & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that the said Aborn Levis, on the 15th day of September, 1873, at said New York, to wit, at said Providence, drew a certain other order in writing of that date, by him signed, and directed the same to said Hoyt, Spragues & Company, therein requesting said Hoyt, Spragues & Company to pay to himself, said Aborn Levis, four months after date, a certain other sum of two thou-
223 sand two hundred and fifty dollars ($2,250) and charge the same to his account for value received; and said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Spragues & Company, which the said Hoyt, Spragues & Company then and there accepted to pay, and thereby became liable to pay the same, according to the tenor thereof; and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to the plaintiff for value received, by means whereof the said Hoyt, Spragues & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same, according to the tenor and effect of said order and of the acceptance thereof of said Hoyt, Spragues & Company and the endorsement thereon; yet, though said four months have elapsed and though often requested, said Hoyt, Spragues & Company and the defendants have hitherto refused and still do refuse to pay the same.

And also for that said Aborn Levis, on the 3d day of October, A. D. 1883, at said New York, to wit, at said Providence, drew a certain other order, in writing, of that date, by him signed, and directed the same to the said Hoyt, Spragues & Company, therein requesting said Hoyt, Spragues & Company to pay to the order of himself, said Aborn Levis, four months after date, a certain other sum of one thousand dollars ($1,000), and charge the same to his ac-

count for value received; and the said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Spragues & Company, which said Hoyt, Spragues & Company then and there accepted to pay, and thereby became liable to pay the same, according to the tenor thereof; and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to the plaintiff for value received, by means whereof said Hoyt, Spragues & Company became liable, and in consideration thereof then and there promised the plaintiff to pay the same, according to the tenor and effect of said order and of said Hoyt, Spragues & Company's acceptance thereof and the endorsement thereon; yet, though said four months have elapsed and though often requested, said Hoyt, Spragues & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Hoyt, Spragues & Company, on the 1st day of January, 1874, at said New York, to wit, at said Providence, by their promissory note, in writing, of that date, by him signed, promised to pay to the order of themselves, six months after date,
224 at the Manhattan Company, a certain other sum of five hundred twenty-one $\frac{89}{100}$ dollars ($521.89) for value received; and thereafterwards, to wit, on the same day, endorsed the same and delivered the same to the plaintiff for value received, and thereby became liable to pay the same to the plaintiff, according to the tenor and effect of said note and the endorsement thereon; yet, though said six months have elapsed and though often requested, according to the tenor thereof, said Hoyt, Spragues & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Hoyt, Spragues & Company, on the 1st day of January, 1874, at said New York, to wit, at said Providence, by their promissory note, in writing, of that date, by them signed, promised to pay to the order of themselves, twelve months after date, a certain other sum of eight hundred nine $\frac{30}{100}$ dollars ($809.30) at the Manhattan Company, for value received; and thereafterwards, to wit, on the same day, endorsed the same and delivered the same to the plaintiff for value received, and thereby became liable to pay the same to the plaintiff, according to the tenor and effect thereof; yet, though said twelve months have elapsed and though often requested, according to the tenor thereof, said Hoyt, Spragues & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Hoyt, Spragues & Company, on said 1st day of January, 1874, at said New York, to wit, at said Providence, by their promissory note, in writing, of that date, by them signed, promised to pay to the order of themselves, eighteen months after date, a certain other sum of five hundred fifty-seven $\frac{17}{100}$ dollars ($557.17) at the Manhattan Company, for value received; and thereafterwards, to wit, on the same day, endorsed the same and delivered the same to the plaintiff for value received, by means whereof the said Hoyt, Spragues & Company became liable to pay the same to the plaintiff, according to the tenor and effect thereof; yet, though

said eighteen months have elapsed and though often requested, according to the tenor thereof, the said Hoyt, Sprague & Company and the defendants have hitherto refused and still refuse to pay the same.

And also for that said Hoyt, Sprague & Company and the defendants, at said Providence, on the day of the date of the plaintiff's suit, being justly indebted to the plaintiff in one other sum of ten thousand dollars for so much money before that time had and received to the use of the plaintiff, and also for so much money before
225 that time paid, laid out, and expended by the plaintiff to and for said Hoyt, Sprague & Company and for the defendants, and at their instance and request, and also for so much money for interest for the forbearance by the plaintiff, at the request of said Hoyt, Sprague & Company and of the defendants, of money due and owing from the said Hoyt, Sprague & Company and the defendants to the plaintiff, then and there, in consideration thereof, promised the plaintiff to pay him said sum of money last mentioned, on request; yet, though requested, the said Hoyt, Sprague & Company and the defendants have not paid said sum or any part thereof, but have hitherto refused and still refuse to pay the same.

To the plaintiff's damage forty thousand dollars, as laid in his writ dated October 23d, A. D. 1875.

Wherefore he sues.

By his attorney, E. C. MOWRY.

Plea. Filed Nov. 9th, 1875.

And the said defendants come and defend the wrong and injury, when, etc., and say they do not undertake or promise in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country.

By their attorneys, B. F. THURSTON.
C. HART.
J. TILLINGHAST.
J. A. GARDNER.

Agreement for Judgment. Filed March 7, 1883.

In the above-entitled action it is agreed that the following entry be made: Judgment for the plaintiff for thirty-four thousand five hundred dollars, and execution to issue on or before March 6, 1883.

(Signed) E. C. MOWRY,
Plaintiff's Attorney.
A. B. PATTON,
Attorney for Amasa Sprague and William Sprague.

226 And said cause was continued from term to term to the present November term, 1882, when, to wit, on the 7th day of March, 1883, by agreement of parties, the following judgment was entered:

Judgment.

It is considered by the court here that the plaintiff have and recover of the defendant the sum of thirty-four thousand five hundred dollars and costs of court, taxed at one hundred and fifty-one $\frac{61}{100}$ dollars, and have execution therefor.

Execution issued March 7, 1883.

Execution.

RHODE ISLAND DISTRICT, *sc:*

The President of the United States of America to the marshal of said district or to his deputy, Greeting:

[L. S.] Whereas Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, a citizen of said State of Pennsylvania, by the consideration of the circuit court of the United States holden at Providence, within and for Rhode Island district, on the 15th of November, anno Domini 1882, recovered judgment against William Sprague, of South Kingston, in the county of Washington and State of Rhode Island, and Amasa Sprague, of Cranston, in the county of Providence and State of Rhode Island, both citizens of said State, for the sum of thirty-four thousand five hundred dollars, debt, and one hundred and fifty-one and $\frac{61}{100}$ dollars, costs of suit, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the goods, chattels, and real estate of the said William Sprague and Amasa Sprague within your district you cause to be levied and paid unto the said Evan Randolph the aforesaid sums, being thirty-four thousand six hundred and fifty-one and $\frac{61}{100}$ dollars in the whole, with one dollar and thirty-five cents more for this writ, together with interest on said debt from said 7th of March until the whole is paid; and, therefore, also to satisfy yourself for your own fees. Hereof fail not, and make true return of this writ and of your doings thereon to our next circuit court, to be holden at Providence, within and for our district of Rhode Island, on the fifteenth day of June next.

227 Witness Hon. Morrison R. Waite, our Chief Justice, at Providence, this 7th day of March, in the year eighteen hundred and eighty-three.

HENRY PITMAN, *Clerk.*

Judgment rendered, November term, 1882, to wit, March 7th, 1883. (Assumpsit.)

Debt	$34,500 00
Costs	151 61
	$34,651 61
Ex'on	1 35

Marshal's Return.

DISTRICT OF RHODE ISLAND, *sc:*

On the 7th day of March, 1883, at 11 o'clock and 30 minutes in the forenoon, I levied this execution on, etc. * * * I also, at 11 o'clock and 30 minutes in the forenoon, made further service of this execution by levying the same on all the right, title, and interest which said William Sprague had on the 17th of August, 1882, at 11 o'clock and 30 minutes in the forenoon, the time of the attachment on the writ of mesne process, in and to any shares of stock in the Quidnick Company, a manufacturing corporation created by the General Assembly of the State of Rhode Island, by serving a copy of this execution upon William Sprague, treasurer of said Quidnick Company, and also by serving a copy of this execution on Zechariah Chafee, claiming to be treasurer of said Quidnick Company; and on the 23d day of March, 1883, at 11 o'clock in the forenoon, after having advertised said sale for ten days before the said sales of stock were exposed and offered for sale in the Providence Daily Journal, a newspaper printed and published in the city and county of Providence, a copy of which advertisement is hereto annexed and marked B, I sold the same at public auction to Evan Randolph, he being the highest bidder therefor, for the sum of fifty dollars, which said sum the said Evan Randolph hath since well and truly paid me.

"B."

U. S. Marshal's Sale.

By virtue of an execution issued from the circuit court of the United States, holden at Providence, within and for the dis-
228 trict of Rhode Island, on the 15th day of November, 1882, returnable at its June term, 1883, Evan Randolph, plaintiff, against William Sprague, of South Kingston, in the county of Washington, in the State of Rhode Island, and Amasa Sprague, of Cranston, in the county of Providence, in said State of Rhode Island, defendants, will be sold at public auction in the United States marshal's office, custom-house building, Providence, R. I., on Friday, March 23, at 11 o'clock in the forenoon, all the right, title, and interest which William Sprague had on the 17th day of August, 1882, at 11 o'clock and 30 minutes in the forenoon, the time of the attachment on writ of mesne process, in and to any shares of stock of the Quidnick Company, a manufacturing corporation created by the General Assembly of the State of Rhode Island; also all the right, title, and interest which said Amasa Sprague had on the 17th day of August, 1882, at 11 o'clock and 30 minutes in the forenoon, the time of the attachment on writ of mesne process, in and to any shares of stock in the Quidnick Company, a manufacturing corporation created by the General Assembly of the State of Rhode Island.

Levied on March 7, 1883, at 11 o'clock and 30 minutes in the forenoon. Sold to satisfy said execution, if sufficient.

JAMES H. COGGESHALL,
U. S. Marshal, Rhode Island District.

F.

$3,000. NEW YORK, *Aug.* 9, 1873.

Four months after date pay to the order of myself (Aborn Levis) three thousand dollars, value received, and charge the same to account of—

ABORN LEVIS.

To Hoyt, Sprague & Co., Dec. 12, New York.

Endorsed: "Aborn Levis." Protest waived. Aborn Levis. 467. Ex. 5, Aug. 8, '76, W. P. D., ref. Payable at Manhattan Co. Hoyt, Sprague & Co.

G.

$3,000. NEW YORK, *Aug.* 9, 1873.

Four months after date pay to the order of myself (Aborn Levis) three thousand dollars, value received, and charge the same to account of—

ABORN LEVIS.

To Hoyt, Sprague & Co., Dec. 12, New York.

Endorsed: "Aborn Levis." Protest waived. Aborn Levis. 467. Ex. 6, W. P. D., ref., Aug. 8, '76. Payable at Manhattan Co. Hoyt, Sprague & Co.

232 H.

$2,500. NEW YORK, *July* 18, 1873.

Four months after date pay to the order of myself (Aborn Levis) twenty-five hundred dollars, value received, and charge the same to account of—

ABORN LEVIS.

To Hoyt, Sprague & Co., Nov. 21, New York.

Endorsed: "Aborn Levis," Kelleyvilie, Delaware Co., Pa. 467. Ex. 7, W. P. D., ref., Aug. 8, '76. Payable at Manhattan Co. Hoyt, Sprague & Co.

I.

$2,500. NEW YORK, *Sept.* 15, 1873.

Four months after date pay to the order of myself (Aborn Levis) twenty-two hundred and fifty dollars, value received, and charge the same to account of—

ABORN LEVIS.

To Hoyt, Sprague & Co., January 18, New York.

Endorsed: "Aborn Levis." Pay E. H. Perkins, Jr., cashier, or order, for — of Columbia National Bank, Columbia, Pa. 467. Ex. 9, W. P. D., ref., Aug. 8, '76. Payable Manhattan Co. Hoyt, Sprague & Co.

UNITED STATES OF AMERICA, }
District of Rhode Island, } *ss:*

CLERKS OFFICE, U. S. CIRCUIT COURT,
AT PROVIDENCE, *December* 8, 1884.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the above and foregoing three pages contain true copies of the originals now on file in this office in the cause, Evan Randolph *v.* William Sprague *et al.*, disposed of November term, 1882.

[L. S.] In testimony whereof I have hereunto set the seal of said court and my hand this 8th day of December, A. D. 1884.

HENRY PITMAN, *Clerk.*

233 *Deposition of Herbert Almy.*

HERBERT ALMY, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Evan Randolph, complainant in said suit, doth depose and say as follows:

Direct examination by WILLIAM H. BAKER, Esq.

Interrogatory 1. What is your name, age, residence, and occupation?

Ans. Herbert Almy; 33 years; Providence; assistant clerk of supreme court of Rhode Island, for county of Providence.

Int. 2. How long have you been clerk of said court?

Ans. Eight years.

Int. 3. Have you with you all the original papers in the case of Horatio N. Waterman *vs.* The A. & W. Sprague Manufacturing Company that was brought in said court and in which judgment was rendered for said Waterman, and will you compare the papers which I now hand to you with the original papers in said cause and state whether the papers which I hand you are true copies of the processes and proceedings in said court, so far as they relate to the attachment and levy on execution upon the judgment rendered in said cause and the sale under said execution of the stock in the Quidnick Company owned by Fanny Sprague, Mary Sprague, and the A. & W. Sprague Manufacturing Company?

Ans. I have; and they are true copies.

Int. 4. Will you file such copies certified by you as an exhibit to your deposition?

Ans. I will.

(The copies of papers referred to in Int. 4 are hereunto annexed, marked Exhibit 3.)

Int. 5. Do the copies which you have filed as an exhibit contain all that appears on the original papers on file in said cause concerning the attachment, levy, or sale of the Quidnick stock owned by Mary Sprague, Fanny Sprague, and the A. & W. Sprague Manufacturing Company?

Ans. Yes; I think they do.

Int 6.. Will you examine the paper which I now hand you and state whether it is a true copy of the deposition of Horatio N. Waterman taken in perpetual memory and on record in said court.

234 Ans. I have examined the same, and it is a true copy, together with a copy of the master's return.

Int. 7. Will you file the same with the examiner to be annexed to your deposition as a part thereof?

Ans. I will.

(The copy of the deposition and master's return are hereunto annexed, marked Exhibit 4.)

I. H. SOUTHWICK, JR., *Examiner.*

Int. 8. Will you, at your earliest convenience, make a certified copy of the citation and file the same with the examiner to be annexed to your deposition as a part thereof?

A. I will.

(The copy of citation referred to in Int. 8 is hereunto annexed, marked Exhibit 5.)

HERBERT ALMY.

Subscribed by said Herbert Almy in my presence this twenty-ninth day of November, A. D. 1884.

ISAAC H. SOUTHWICK, JR., *Examiner.*

235 EXHIBIT 3.

(Pages 83 to 92, inclusive.)

Referred to by Herbert Almy in his answer to interrogatory 4 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc.:*

At the supreme court of said State, begun and holden at Providence, within and for the county of Providence, on the first Monday of October, in the year of our Lord one thousand eight hundred and eighty-two.

Be it remembered that at the present term of this court Horatio N. Waterman, of East Greenwich, in our county of Kent, complained of the A. & W. Sprague Manufacturing Company, a corporation having its principal office at Providence, whose property was attached and it summoned by the sheriff in an action of the case to recover damages of the defendant corporation for its neglect and refusal to pay to the plaintiff the sum of $20,000, balance due to said plaintiff by book account on, to wit, — day of April, A. D. 1882.

The plaintiff also filed the usual money counts and a count for interest. Said case was duly entered at said term, the defendant

pleading the general issue, by its attorney, Andrew B. Patton, and other pleas being filed by C. Frank Parkhurst, James Tillinghast, Charles Hart, and B. F. Thurston, who claimed to be attorneys for said defendant corporation; and being called for hearing, upon the plaintiff's motion to strike out said last-mentioned pleas, the same was granted; and they were accordingly stricken out, and thereafterwards the defendant corporation submitted to judgment for the plaintiff for $12,209.57 and costs.

Whereupon it is considered by the court that the plaintiff recover and have of the defendant corporation the sum of $12,209.57, debt or damages, and costs of suit, taxed at $26.40.

236 THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence*, } *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

Whereas Horatio N. Waterman, of East Greenwich, county of Kent and State of Rhode Island, by the consideration of our supreme court, holden at Providence, within and for our county of Providence on the first Monday of October last past, recovered judgment against the A. & W. Sprague Manufacturing Company, a corporation duly incorporated and located and doing business and having its principal office at Providence, in said State, for the sum of $12,209.57, debt or damages, and $26.40, costs of suit, as to us appears of record, whereof execution remains to be done:

We command you, therefore, that of the goods and chattels and real estate of the defendant within your precinct you caused to be levied and paid unto the said plaintiff the aforesaid sums, being twelve thousand two hundred and thirty-five dollars and ninety-seven cents in the whole, with twenty-five cents more for this writ; and thereof also to satisfy yourself for your own fees.

Hereof fail not, and make true return of this writ and of your doings thereon to our next supreme court, to be holden at Providence, within and for our county of Providence, on the fourth Monday of March inst.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this second day of March, in the year one thousand eight hundred and eighty-three.

CHARLES BLAKE, *Clerk.*

Judgment was rendered on the 18th day of December, A. D. 1882, in an action of the case upon book account.

PROVIDENCE, *sc:*

In PROVIDENCE, *March* 22, 1883.

I have this day, at 2 o'clock and 30 minutes p. m., made further service of this writ and levied the within execution on four hundred and fifty-five (455) shares of the capital stock of the defendant corporation, The A. & W. Sprague Manufacturing Company, in the

Quidnick Company, a corporation located and doing business in the city of Providence, by leaving a true and attested copy of this execution, with my doings, together with the date and time of day, endorsed thereon, with William Sprague, the treasurer thereof, in his hands and possession.

237 And have notified the defendant corporation, the A. & W. Sprague Manufacturing Company, of said levy by leaving a true and attested copy of the within execution, with my doings endorsed thereon, with Amasa Sprague, the treasurer thereof, in his hands and possession.

WILLIAM S. KENT,
Deputy Sheriff.

PROVIDENCE, *sc:*

In Providence, in said county, on this 3d day of April, 1883, the said defendant corporation, the A. & W. Sprague Manufacturing Company, not having paid the money due on the within execution, with the costs that have accrued thereon, and redeemed the stock on which said execution was duly levied on the 22d day of March, 1883, I have this day sold the same at public auction, as previously by me advertised, to Evan Randolph, the highest bidder for the same, for the sum of one hundred dollars, which I have applied towards the satisfaction of the within execution and the costs and charges on the same.

WILLIAM S. KENT,
Deputy Sheriff.

PROVIDENCE, *sc:*

IN PROVIDENCE, *March* 22, 1883.

I have this day, at 2 o'clock and 30 minutes p. m., levied the within execution on eight hundred and two (802) shares of the capital stock of the Quidnick Company, a corporation located and doing business in the city of Providence, standing in the name of the defendant corporation, The A. & W. Sprague Manufacturing Company, or in the name of Fanny Sprague or owned by either of them at the time of the levy thereof, by leaving a true and attested copy of this execution, with my doings and the date and time of day of such levy endorsed thereon, with William Sprague, the treasurer thereof, in his hands and possession.

And have notified the said A. & W. Sprague Manufacturing Company of the said levy by leaving a true and attested copy of the within execution, with my doings endorsed thereon, with Amasa Sprague, the treasurer thereof, in his hands and possession, and have notified the within-named Fanny Sprague of the said levy by leaving a true and attested copy of this execution, with my doings endorsed thereon, at the last and usual place of abode of the said Fanny Sprague, with some one there.

WILLIAM S. KENT,
Deputy Sheriff.

238 PROVIDENCE, *sc:*

In Providence, in said county, on this 3d day of April, 1883, the said defendants or either of them, The A. & W. Sprague Manufacturing Company or Fanny Sprague, not having paid the money due upon the within execution, with the costs that have accrued thereon, and redeemed the said stock on which said execution was duly levied on the 22d day of April, 1883, I have this day sold the same at public auction, as previously by me advertised, to Evan Randolph, the highest bidder for the same, for the sum of $50.00, which I have applied towards the satisfaction of the within execution and the costs and charges on the same.

WILLIAM S. KENT,
Deputy Sheriff.

PROVIDENCE, *sc:*

IN PROVIDENCE, *March* 22, 1883.

I have this day, at 2 o'clock and 30 minutes p. m., levied the within execution on six hundred and one (601) shares of the capital stock of the said Quidnick Company standing in the name of the defendant corporation, The A. & W. Sprague Manufacturing Company, or in the name of Mary Sprague or owned by either of them at the time of the levy thereof, by leaving a true and attested copy of the within execution, with my doings and the date and time of day of such levy endorsed thereon, with William Sprague, the treasurer of the said Quidnick Company, in his hands and posssession, and have notified the said A. & W. Sprague Manufacturing Company of the said levy by leaving a true and attested copy of the within execution, with my doings endorsed thereon, with Amasa Sprague, the treasurer thereof, in his hands and possession, and have notified the within-named Mary Sprague of the said levy by leaving a true and attested copy of the within execution, with my doings endorsed thereon, at the last and usual place of abode of the said Mary Sprague, with some one there.

WILLIAM S. KENT,
Deputy Sheriff.

PROVIDENCE, *sc:*

In Providence, in said county, on this 3d day of April, 1883, the said defendants, The A. & W. Sprague Manufacturing Company nor Mary Sprague nor either of them, not having paid the money due on the within execution, with the costs that have accrued thereon, and redeemed the said stock or shares on which said execu-
239 tion was duly levied on the 22d day of April, 1883, I have this day sold the same at public auction, as previously by me advertised, to Evan Randolph, the highest bidder for the same, for the sum of twenty-five dollars, which I have applied towards the satisfaction of the within execution and the costs and charges on the same, and return this execution unsatisfied.

6 levies	$4 50
9 copies	6 75
Advertising	2 00
Printing	19 10
Travel	1 50
Com. on sale	10 25
5 deeds	12 50
	$56 60

Amount received for sales	$1,495 00
Costs and expenses	56 60
	$1,438 40

WILLIAM S. KENT,
Deputy Sheriff.

Sheriff's Sale.

By virtue of an execution, No. 2010, issued from the supreme court, holden at Providence, within and for the county of Providence, dated March 2, A. D. 1883, judgment rendered December 18, A. D. 1882, and returnable to said court March term, A. D. 1883, wherein Horatio N. Waterman, of East Greenwich, county of Kent and State of Rhode Island, is plaintiff and the A. & W. Sprague Manufacturing Company, a corporation duly incorporated and located and doing business and having its principal office at Providence, in said State, defendant, will be sold at public auction at the sheriff's office, in the Providence county court-house, on College street, in the city of Providence, on Tuesday, the 3d day of April, A. D. 1883, at 11 o'clock a. m.

* * * * * * *

Also 455 shares of the capital stock of the Quidnick Company, a corporation located and doing business in the city of Providence, standing in the name of the defendant corporation, The A. &
240 W. Sprague Manufacturing Company, or owned by said corporation on the 22d day of March, A. D. 1883, at 2 o'clock and 30 minutes p. m., the time of the levy of said execution.

Also 802 shares of the capital stock of the said Quidnick Company standing in the name of the defendant corporation, The A. & W. Sprague Manufacturing Company, or in the name of Fanny Sprague or owned by either of them on the 22d day of March, A. D. 1883, at 2 o'clock and 30 minutes p. m., the time of the levy of said execution

Also 601 shares of the capital stock of the said Quidnick Company standing in the name of the defendant corporation, The A. & W. Sprague Manufacturing Company, or in the name of Mary Sprague or owned by either of them on the 22d day of March, A. D. 1883, at 2 o'clock and 30 minutes p. m., the time of the levy of the said execution.

Levied on the dates and times of day as above stated, and will be sold to satisfy said execution, if sufficient.

WILLIAM S. KENT,
Deputy Sheriff.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

CLERK'S OFFICE, SUPREME COURT,
PROVIDENCE, *Nov.* 4, 1884.

I certify the foregoing to be a true copy of the judgment of said court entered at the October term thereof, A. D. 1882, in the case No. 2010, Horatio N. Waterman *vs.* The A. & W. Sprague Manufacturing Company, together with copies of the execution, levies, and advertisements of the Quidnick stock sold under said execution.

Witness my hand and seal of said court hereto affixed this
[L. S.] 4th day of November, A. D. 1884.

HERBERT ALMY,
Assistant Clerk.

241 EXHIBIT 4.

(Pages 93 to 101, inclusive.)

Referred to by Herbert Almy in his answer to interrogatory 7 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

The depositions of Horatio N. Waterman and James W. Bullock, taken in perpetual memory August 8, 1883, in the city of Providence, county of Providence, pursuant to the citation hereto annexed.

Deposition of Horatio N. Waterman.

HORATIO N. WATERMAN, of East Greenwich, Kent county, State of Rhode Island, being first duly sworn, deposes as follows:

Questions by ARNOLD GREEN, Esq., of counsel for Abiram H. Austin, named in said citation:

Interrogatory 1. Please give your name, residence, and age.

Answer. My name, Horatio N. Waterman; live in East Greenwich; 77 years old last February.

Int. 2. Were you at any time in the employ of the A. & W. Sprague Manufacturing Company and its predecessors?

Ans. I was in their employ thirty-eight years and two days.

Int. 3. When did your employment with the A. & W. Sprague Manufacturing Company begin and end?

Ans. It began on April 11, 1862, and ended on April 7, 1876.

Int. 4. Were you continuously in the employ of A. & W. Sprague and afterwards of the A. & W. Sprague Manufacturing Company?

Ans. Yes, sir; I continued in their employ.

Int. 5. Did the A. & W. Sprague Manufacturing Company owe

you anything in October, 1873; and, if so, how much and for what?

Ans. Yes, sir. They owed me for eleven years' work. It amounted to some—over six thousand dollars, without the interest.

Int. 6. Have you a detailed account of your services for the A. & W. Sprague Manufacturing Company? If so, produce it and annex it to your deposition.

242 Ans. Yes, sir; here it is.

(Witness produces paper, marked "Exhibit A." C. F. Parkhurst, Esq., of counsel for Z. Chafee, trustee, objects to this account going in as evidence, on the ground that sufficient foundation has not been laid to make it admissible.)

Int. 7. Did you in 1873 demand and have you since November 1, 1873, demanded payment of the A. & W. Sprague Manufacturing Company; if so, when, how often, and of what officer or officers?

Ans. I demanded of Amasa Sprague in 1873, some time in the month of May or June, payment of my account, and we talked the affair over afterwards two or three times. I demanded payment after November 1, 1873, up to several years afterwards; once in 1875; once in 1877. These demands were made of Amasa Sprague. He talked favorable that he was going to pay me, and advised me not to take the trust notes.

Int. 8. Was Amasa Sprague an officer of the A. & W. Sprague Manufacturing Company; and, if so, what?

Ans. He was trustee. He was here in the office, in Providence, at the time. He was doing the business in the office.

Int. 9. Do you know what position, if any, Amasa Sprague held with the A. & W. Sprague Manufacturing Company?

Ans. Well, he was in the office with Mr. Chafee, doing business with him for the company.

Int. 10. Have you ever submitted a detailed account of your claim to the A. & W. Sprague Manufacturing Company; if so, when and to what officer?

Ans. I submitted it to Mr. Bullock; he was the accountant at Cranston. The date is on there, I guess. I can't exactly state the date. It was some time in the spring of 1876. The date is not on here, but it was in the year 1876 and the month of May, I think.

Int. 11. Was the account submitted—the one already produced by you and marked "Exhibit A?"

(Objected to by C. F. Parkhurst, Esq., on ground before stated.)

Ans. It was. That is the account, sir.

Int. 12. Take the account and tell us how much of it, if any, is in your handwriting, who prepared the account, and what parts of the account, if any, are not in your handwriting.

Ans. The whole account is in my handwriting, except the writing in ink on the eleventh page.

(The pages are numbered by the master.)

243 Int. 13. When did you prepare that account, the parts of it which you wrote?

Ans. I put that down every week through the year, from 1862 up to the end of it.

Int. 14. Is that account an accurate statement of the principal of your charges against the A. & W. Sprague Manufacturing Company for services?

Ans. Yes, sir; as it is there.

Int. 15. Has this detailed account ever been approved or ratified by the A. & W. Sprague Manufacturing Company or by any one in its behalf; if so, when and by whom?

Ans. Well, Amasa Sprague ordered me to have Mr. Bullock make up the account and he did so in the year 1876, I think, pretty sure. This is the account and no other. This is the account that I presented to Mr. Bullock, and he made it up; the account marked "Exhibit A."

Int. 16. Do you know who the treasurer of the A. & W. Sprague Manufacturing Company was from 1863 to 1877?

(Objected to by Mr. Parkhurst as immaterial and otherwise.)

Ans. Amasa Sprague. I don't know of any other.

Int. 17. Were you the plaintiff in the suit at law, Horatio N. Waterman *vs.* A. & W. Sprague Manufacturing Company, in supreme court of Rhode Island for county of Providence, in which final judgment was entered at the October term, 1882?

Ans. Yes, sir.

Int. 18. Did you ever receive any payments on account of your claim against the A. & W. Sprague Manufacturing Company from the said company, or from any one in its behalf, before bringing suit against the company?

Ans. No, sir; never.

Int. 19. Have you ever owned or held any of the renewal notes, so called, issued under the Sprague trust deed to Zechariah Chafee of November 1, 1873?

Ans. No, sir.

Int. 20. Have you ever assented to, taken part in, or affirmed the trust deed of November 1, 1873, made by the Spragues and the A. & W. Sprague Manufacturing Company to said Chafee, or any transfers or proceedings thereunder?

Ans. No; I have not.

244 Int. 21. Have you ever received any payments from Chafee as trustee under the said Sprague deed of November 1, 1873, or under the transfer of stock in the Phenix Iron Foundry, made by the A. & W. Sprague Manufacturing Company to said Chafee, dated January 1, 1874?

Ans. No, sir.

Int. 22. Have you assented to or taken part in or affirmed the said transfer of stock in the Phenix Iron Foundry of January 1, 1874, from the A. & W. Sprague Manufacturing Company to Chafee?

Ans. No.

Int. 23. Have you ever accepted any conveyance or deeds or

transfers of property, original or by way of security, made or attempted to be made under the said Sprague deed of trust of November 1, 1873, to Zechariah Chafee, or under the transfer to said Chafee from the A. & W. Sprague Manufacturing Company, of the stock in the Phenix Iron Foundry of January 1, 1874?

Ans. No.

Int. 24. Did you have any conversation with Amasa Sprague about your claim against the A. & W. Sprague Manufacturing Company after 1877?

Ans. Yes.

Int. 25. Where and what was it?

Ans. Well, he said he was going to pay me every dollar he owed me, or we shall pay you every dollar we owe you; that he meant the manufacturing firms. This was some time in 1877 or 1878; 1878, I think.

Int. 26. Did or did not Amasa Sprague ever say anything to you subsequent to 1877 about your claim against the A. & W. Sprague Manufacturing Company, the corporation?

Ans. Yes. We had a talk one morning when they had a creditors' meeting at the counting-room. He drove up, and I stood on the steps. I told him I had a talk with Mr. Chafee, and Chafee refused to let me come in as one of the creditors, and then he advised me to get some legal authority in regard to it. I did so, by going to Mr. Beach. I couldn't say what day it was. They adjourned from his office over to the hall that day. I think it was two years ago last spring.

Int. 27. Did you ask Amasa Sprague for your money then?

Ans. No; I did not.

Cross-examination.

Questions by C. F. PARKHURST, Esq.:

Interrogatory 1. Did you ever demand payment of Amasa
245 Sprague of any stated or fixed sum of money as your claim against the company?

Answer 1. No; I never did.

Int. 2. You have said, in answer to question 25, that you had conversation with Amasa Sprague in 1877 or 1878. How do you fix the date?

Ans. At the time I did, but not since. I fixed it just as I told you before, in 1877 or 1878. I don't know the exact date. I took no date of it when I talked with him.

Int. 3. Might it not have been in 1876?

Ans. Yes; it might.

Int. 4. Might it not have been in 1875?

Ans. I couldn't say about that.

Int. 5. Will you swear that you have ever since 1875 demanded payment of your claim from Amasa Sprague?

Ans. Yes, sir; I have demanded payment of them, as I have told you before. I have demanded payment since 1875 several times.

Int. 6. Can you swear positively to any date in the year 1875 or later when you demanded such payment?

Ans. I have no date of it—no particular date.

Int. 7. You know, do you not, that the Spragues failed in October, 1873, and conveyed their property in trust to Mr. Z. Chafee, in trust for their creditors, and have known it since 1st of December, 1873?

Ans. I have known that since 1873—pretty well, too.

Int. 8. Did you attend the creditors' meeting in November, 1873, at which the creditors of the Spragues authorized the scheme of a deed to trustees for the benefit of creditors?

Ans. Yes; I did.

Int. 9. Did you ever make any objection to the carrying out of such scheme?

(Objected to as immaterial and generally by Mr. Green.)

Ans. No.

Int. 10. You have asked Mr. Chafee, have you not, to settle your claim?

(Objected to as before.)

Ans. Yes; have asked him three times.

Int. 11. Did you or not know that you were entitled to take the trust notes under said trust mortgage; and, if so, why did you not take them?

(Objected to as before.)

246 Ans. Well, I was advised not to take them by Amasa Sprague, because he said he was going to pay me.

HORATIO N. WATERMAN.

STATE OF RHODE ISLAND, *Providence*, } *sc:*

In the city of Providence, on the eighth day of August, A. D. 1883, at 10.30 o'clock of the forenoon, at the office of Arnold Green, Esq., No. 43 North Main street, the time and place named in the annexed citation, appeared, pursuant to said citation, Horatio N. Waterman, therein named, who, being first sworn to testify the truth, the whole truth, and nothing but the truth, gave the foregoing deposition, which was reduced to writing by me in his presence and by him subscribed in my presence. Taken at request of Abiram H. Austin, of Liching county, State of Ohio, in perpetual memory, pursuant to the provisions of chapter 214, sections 30, 31, and 32, of the Public Statutes of Rhode Island, for the purposes named in said citation. The adverse parties named in said citation were duly notified of the taking of said deposition, as appears by the return of the officer upon said citation, and the said Zechariah Chafee, trustee, appeared by his counsel. I further certify that I am not interested in the subject-matter of said deposition nor of counsel for nor the attorney of either party named in said citation.

Attest: ROLLIN MATHEWSON,
Master in Chancery.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } *sc:*
Providence, }

CLERK'S OFFICE, SUPREME COURT,
PROVIDENCE, *November* 4, 1884.

I certify the foregoing to be a true copy of the deposition of Horatio N. Watermans *in perpetuam rei memoriam*, as appears by the record in this office, in Book No. 3, pages 67 to 72, both inclusive.

[L. S.] Witness my hand and the seal of said court hereto affixed this 4th day of November, A. D. 1884.

HERBERT ALMY,
Assistant Clerk.

Fee for copy, $3.75.

247 EXHIBIT 5.

Referred to by said Herbert Almy in his answer to interrogatory 8 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

Citation for Deposition.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } *sc:*
Providence, }

To the sheriff, his deputy, or to either of the town sergeants or constables in the county of Providence, Greeting:

[L. S.] Request having been made to me by Abiram Harrington Austin, of Liching county, Ohio, to take the depositions of Horatio N. Waterman and James W. Bullock, in perpetual memory, in relation to the claim or title of said Austin to certain shares of the capital stock of the Phenix Iron Foundry, a corporation located in the city of Providence; and whereas the office of Arnold Green, Esq., at No. 43 North Main street, said city, is by me appointed the place, and Wednesday, the 8th day of August instant, at 10.30 o'clock a. m., the time, of taking the same, you are therefore hereby required to notify the said Phenix Iron Foundry, the A. & W. Sprague Manufacturing Company, a corporation of said city, and Zechariah Chafee, of said city, of the place and time aforesaid, at least twenty-four hours before said time, that they may attend and put interrogatories to the said deponents; and also to notify the said deponents of the place and time aforesaid, that they are required then and there to attend and give testimony of what they know relative to the said matter.

Hereof fail not, and true return make of this writ.

Given under my hand and seal this 2d day of August, A. D. 1883.

ROLLIN MATHEWSON,
Master in Chancery.

PROVIDENCE, *sc:*

PROVIDENCE, *August 4th*, 1883.

I have notified the A. & W. Sprague Manufacturing Company by

reading this citation to Amasa Sprague, treasurer, in his pres-
248 ence and hearing. I have also notified the Phenix Iron Foundry by reading *the* this citation to Benjamin Glading, treasurer, in his presence and hearing. I have also notified Zechariah Chafee, trustee of the A. & W. Sprague Manufacturing Company, by reading this citation to him in his presence and hearing.

J. ABORN GARDINER,
Deputy Sheriff.

Three services	$2 25
Three miles' travel	30
	$2 55

I acknowledge legal service of the within citation.

JAMES W. BULLOCK.

A true copy.
[L. S.] Attest:

HERBERT ALMY,
Assistant Clerk.

Deposition of Enos Lapham.

ENOS LAPHAM, of Warwick, in the county of Kent and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Evan Randolph, complainant in said suit, doth depose and say as follows:

Direct examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Enos Lapham; 63 years old; residence, Warwick, R. I.; manufacturer.

Int. 2. How long have you been engaged in manufacturing?

Ans. I commenced in 1839.

Int. 3. Are you familiar with the character and value of cotton manufacturing property?

Ans. I should think I ought to know something about it. Yes; I think so.

Int. 4. Are you familiar and were you familiar on the tenth day of January, A. D. 1884, with the property of the Quidnick Company located in the village of Quidnick, in the town of Coventry and in the village of Arctic, in the town of Warwick, in this State; and, if yea, what should you say was the fair market value of all the said property on the tenth day of January, A. D. 1884?

249 Ans. Well, I think I was familiar with it as much as an outside party could be. Well, I think it was worth half a million of dollars for that.

Int. 5. Whether or not, if, in your judgment, the title to this property at that time had not been clouded, this property would not have been worth more than the price you have named.

(Objected to on the ground that it assumes a state of facts with reference to the title to the property of which there is no proof.)

Ans. It ought to be. Yes; I think it would.

Cross-examination by CHARLES H. PARKHURST, Esq.:

Interrogatory 1. Were you or not present at the sale of the Quidnick Company's property at public auction in the city of Providence on the tenth of January, 1884; and, if so, did you not bid for both the Artic and the Quidnick property at said sale, either by yourself or by some one authorized to bid for you?

Ans. I was present. I did not bid; neither did I authorize any one to bid.

Int. 2. Did you or not bid at said sale upon the Arctic property?

(Objected to as irrelevant and as not in cross-examination.)

Ans. I did not.

Int. 3. Did any one at said sale bid for you or in your interest or in the interest of any party or parties that you represented at said sale?

(Objected to as irrelevant.)

Ans. No.

Int. 4. Do you mean to say that at said sale you neither made nor authorized any other person to make any bid at said sale for either the Arctic or the Quidnick Mills?

(Objected to as irrelevant.)

Ans. I mean to say just that; in any form or shape, or under any circumstances.

ENOS LAPHAM.

Subscribed by the said Enos Lapham in my presence this ninth day of December, A. D. 1883.

ISAAC H. SOUTHWICK, *Examiner.*

Deposition of Henry V. A. Joslin.

HENRY V. A. JOSLIN, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Evan Randolph, complainant in said suit, doth depose and say as follows:

250 Direct examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Henry V. A. Joslin; age, 38; residence, Providence; occupation, city clerk of the city of Providence.

Int. 2. How long have you been city clerk?

Ans. Since the first Monday in January, 1879.

Int. 3. Are you familiar with and have you examined the books kept in your office for the recording of the certificates filed by manufacturing corporations doing business in this city?

Ans. I am familiar with them and have examined them.

Int. 4. State whether the A. & W. Sprague Manufacturing Company ever filed in the city clerk's office of the city of Providence, Rhode Island, any certificate, as required by the laws of Rhode Island, signed by a majority of the directors of said corporation, stating the amount of its capital stock paid in, the value as last assessed for a tax on its real estate, the value of its personal assets, and the amount of its debts or liabilities on the 31st day of December next preceding the time of filing the certificate, or has said corporation ever filed any certificate in said office, as required by law, by which its stockholders would be exempt from its liabilities to a greater extent than the shares of such stockholders, respectively?

Ans. No. No certificate has ever been filed.

HENRY V. A. JOSLIN.

Subscribed by the said Henry V. A. Joslin in my presence this ninth day of December, A. D. 1884.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Deposition of William H. Baker.

WILLIAM H. BAKER, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and testifying on the part of the said Evan Randolph, complainant in said suit, doth, by the determination of the examiner, depose and say, in narrative form, as follows:

My name is William H. Baker; age, 37; occupation, attorney-at-law, and have been such for ten years last past; residence, Providence, Rhode Island. I am of counsel of record in this case. I desire to state, inasmuch as it is alleged in the answer of the respondents in this case that the complainants' solicitor of record was present at the hearing in the supreme court of Rhode Island
251 which resulted in the appointment of Gorham P. Pomroy as assignee in the place of Mary and Fanny Sprague, removed from their trusts as assignees, and took part in the proceedings, that I was present at that time; that I understood that I was employed to act as counsel for Mary and Fanny Sprague to oppose their removal and the appointment of said Pomroy in their place; that this hearing occurred, to the best of my recollection, on the twenty-fifth of August, 1833; that no other counsel except myself appeared and took part in the proceedings in opposition to the removal of those ladies and the appointment of Mr. Pomroy; that I was not at that time, to the best of my knowledge, recollection, and belief, the attorney or solicitor of record for Evan Randolph, this complainant, in any suit at law or in equity in any court, nor did I understand or believe that I was employed, either directly or indirectly, as the solicitor or attorney for Evan Randolph at said hearing, and, to the best of my knowledge, recollection, and belief, Messrs. Mowry and Comstock, attorneys and counsellors at law in the city of Providence, Rhode Island, were at that time acting as

the attorneys and solicitors for Mr. Randolph, and neither of them was present at said hearing.

Cross-examination by CHARLES H. PARKHURST, Esq.:

Interrogatory 1. When were you retained by Mr. Randolph as his solicitor, with reference to the matter of his claims to the ownership of the 4,022 shares of the capital stock of the Quidnick Company?

Answer. I could not give you the exact date, but I know it was some time in the fall of 1883. I could approximate to the date by reference to the paper on file in the circuit court, filed by Mowry and Comstock, withdrawing their appearance as solicitors for Mr. Randolph in said cause.

Int. 2. Was the date of the filing of your appearance in this case the date when you were retained?

Ans. I could not state exactly, but it was very near that time.

Int. 3. Were you retained by Mr. Randolph, the complainant, by personal application to you on his part or by letter from him?

Ans. I decline to answer the question, because it is irrelevant and has no connection with anything which I have stated in my testimony heretofore.

Int. 4. Were you present at the sale at public auction of the Quidnick Company's mills, in the city of Providence, on the tenth day of January, 1884?

252 Ans. I was, in company with Mr. Comstock, who at that time still had some connection with Mr. Randolph as his solicitor or attorney, I understood.

(All after the words "I was" in this answer objected to as not responsive to the question.)

WM. H. BAKER.

Subscribed by the said William H. Baker in my presence this ninth day of December, A. D. 1884.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Deposition of Charles B. Gould.

CHARLES B. GOULD, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Evan Randolph, complainant in said suit, doth depose and say as follows:

Direct examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Charles B. Gould; age, 39; Providence, R. I.; occupation, secretary and treasurer of the Quidnick Company; also of the Union Company.

Int. 2. Have you with you the stock transfer book of the Quidnick

Company, and is such book the only record of transfers of stock in said corporation?

Ans. I have. It is.

Int. 3. Will you examine the papers which I now hand to you and state whether the same are true copies of all the transfers of stock in the Quidnick Company since its organization, and if such copies were made by you and compared by you with the transfers recorded in said book to test the accuracy of said copies; and, if yea, will you file said copies as exhibits to this your deposition?

Ans. No; they are not copies of all the transfers, but they are copies of transfers numbers 18, 19, 20, 21, and 22, being transfers from Fanny Sprague, Mary Sprague, Amasa Sprague, William Sprague, and the A. & W. Sprague Manufacturing Company to Zechariah Chafee; of numbers 31, 32, 33, and 34, being transfers from Mary Sprague, William Sprague, Amasa Sprague, and the A. & W. Sprague Manufacturing Company to Fanny Sprague; of number 30, being transfer from Fanny Sprague to Mary Sprague; 253 of number 40, being transfer from Mary Sprague to Evan Randolph; of number 42, being transfer from Fanny Sprague to Evan Randolph. Said copies were made by me and compared by me to test the accuracy of said copies with the transfers recorded in said book. I will file said copies as requested.

The copies referred to are hereunto annexed, marked Exhibits 6, 7, 8, 9, and 10.

CHARLES B. GOULD.

Subscribed by the said Charles B. Gould, in my presence, this ninth day of December, A. D. 1884.

ISAAC H. SOUTHWICK, JR., *Examiner.*

EXHIBIT 6.

Being copies of transfers of stock in the Quidnick Company to Zechariah Chafee, numbered 18, 19, 20, 21, and 22, referred to by Charles B. Gould in his answer to interrogatory 3 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

(Copy.)

Transfer No. 18.

For value received I, Fanny Sprague, hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1st, 1873, made by others and myself to him, eight hundred and two shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

FANNY SPRAGUE.

(Copy.)

Transfer No. 19.

For value received I, Mary Sprague, hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence,
to secure the performance of the conditions of a trust mortgage
254 dated Nov. 1st, 1873, made by others and myself to him, six hundred and one shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

MARY SPRAGUE.

(Copy.)

Transfer No. 20.

For value received I, Amasa Sprague, hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1st, 1873, made by others and myself to him, ten hundred and eighty-two shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

AMASA SPRAGUE.

(Copy.)

Transfer No. 21.

For value received I, William Sprague, by Amasa Sprague, his attorney, hereby transfer, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage dated Nov. 1st, 1873, made by myself and others to him, ten hundred and eighty-two shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

WILLIAM SPRAGUE,
By AMASA SPRAGUE, *His Attorney.*

(Copy.)

Transfer No. 22.

For value received the A. & W. Sprague Man'f'g Co. hereby transfers, by way of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust
mortgage dated November 1st, 1873, made by others and this
255 company to him, four hundred and fifty-five shares of the capital stock of the Quidnick Company.

Dated this second day of December, A. D. 1873.

A. & W. SPRAGUE MANUFACTURING CO.,
By AMASA SPRAGUE, *Treas.*

EXHIBIT 7.

Being a copy of a transfer of stock in the Quidnick Company from Fanny Sprague to Mary Sprague, numbered 30. Referred to by Charles B. Gould in his answer to interrogatory 3 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

(Copy.)

Transfer No. 30.

For value received I, Fanny Sprague, hereby sell and transfer to Mary Sprague, of Providence, all my right, title, and interest in and to eight hundred and two shares of the capital stock of the Quidnick Company, in trust for the equal benefit of all my creditors.

Dated this twenty-second day of December, A. D. 1873.

FANNY SPRAGUE.

EXHIBIT 8.

Being copies of transfers of stock in the Quidnick Company to Fanny Sprague, numbered 31, 32, 33, and 34. Referred to by Charles B. Gould in his answer to interrogatory 3 of foregoing deposition.

(Copy.)

Transfer No. 31.

For value received I, Mary Sprague, hereby sell and transfer to Fanny Sprague, of Providence, all my right, title, and interest in and to six hundred and one shares of the capital stock of the Quidnick Company, in trust for the equal benefit of all my creditors.

Dated this twenty-second day of December, A. D. 1873.

MARY SPRAGUE.

256 (Copy.)

Transfer No. 32.

For value received I, Amasa Sprague, hereby sell and transfer to Fanny Sprague, of Providence, all my right, title, and interest in and to ten hundred eighty-two shares of the capital stock of the Quidnick Company, in trust for the equal benefit of all my creditors.

Dated this twenty-second day of December, A. D. 1873.

AMASA SPRAGUE.

(Copy.)

Transfer No. 33.

For value received the A. & W. Sprague Manufacturing Company hereby sell and transfer to Fanny Sprague, of Providence, all its

rights, title, and interest in and to four hundred and fifty-five shares of the capital stock of the Quidnick Company, in trust for the equal benefit of all its creditors.

Dated this twenty-second day of December, A. D. 1873.

A. & W. SPRAGUE M'F'G CO.,
By AMASA SPRAGUE, *Tr.*

(Copy.)

Transfer No. 34.

For value received I, William Sprague, hereby sell and transfer to Fanny Sprague, of Providence, all my right, title, and interest in and to ten hundred eighty-two shares of the capital stock of the Quidnick Company, in trust for the equal benefit of all my creditors.

WILLIAM SPRAGUE.

Dated this twenty-fourth day of December, A. D. 1873.

EXHIBIT 9.

Being a copy of a transfer of stock in the Quidnick Company from Mary Sprague to Evan Randolph, numbered 40. Referred to by Charles B. Gould in his answer to interrogatory 3 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

257 (Copy.)

Transfer No. 40.

For value received I, Mary Sprague, hereby sell and transfer to Evan Randolph, of Philadelphia, all my right, title, and interest in eight hundred and two shares of the capital stock of the Quidnick Company, said stock being held by me in trust.

Dated this 6th day of August, A. D. 1883.

MARY SPRAGUE.

EXHIBIT 10.

Being a copy of a transfer of stock in the Quidnick Company from Fanny Sprague to Evan Randolph, numbered 42. Referred to by Charles B. Gould in his answer to interrogatory 3 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

(Copy.)

Transfer No. 42.

For value received I, Fanny Sprague, hereby sell and transfer to Evan Randolph, of Philadelphia, all my right, title, and interest in

thirty-two hundred twenty shares of the capital stock of the Quidnick Company, said stock being held by me in trust.

Dated this 6th day of August, A. D. 1883.

FANNY SPRAGUE.

Circuit Court of the United States, Rhode Island District.

I, Isaac H. Southwick, Jr., the examiner named in the commission hereunto attached, hereby certify that the aforenamed Amasa Sprague personally appeared before me on the eighteenth and twenty-fourth days of November, A. D. 1884, at my office, No. 37 Weybosset street, room 24, in the city of Providence, in said district; that the aforenamed Henry Pitman and Herbert Almy personally appeared before me on the twenty-ninth day of November, A. D. 1884, at my said office; that the aforenamed Enos Lapham, Henry V. A. Joslin, William H. Baker, and Charles B. Gould personally appeared before me on the ninth day of December, A. D. 1884, at my said office; that then and there respectively as aforesaid the said Sprague,
258 Pitman, Almy, Lapham, Joslin, Baker, and Gould, after being sworn to testify the truth, the whole truth, and nothing but the truth, did each severally and respectively give his foregoing deposition; that said depositions were severally reduced to writing by me in the presence of each of said deponents respectively; that I determined that said depositions should be taken in the form of specific questions and answers, except the deposition of said William H. Baker, which appears in narrative form followed by specific questions and answers in the cross-examination; that said depositions, when completed, were read over to or by said deponents respectively, and that each of said deponents signed his respective deposition in my presence and in the presence of such of the parties or counsel as did attend.

I further certify that the Exhibits 1 and 2 annexed to the foregoing deposition of said Henry Pitman, the Exhibits 3, 4, and 5 annexed to the foregoing deposition of said Herbert Almy, the Exhibits 6, 7, 8, 9, and 10 annexed to the foregoing deposition of said Charles B. Gould, and all authenticated by my signature, are the documents referred to in said depositions respectively, and that said exhibits were hereunto attached by me.

I further certify that the foregoing depositions of said Sprague, Pitman, Almy, Lapham, Joslin, Baker, and Gould were taken at the request of the aforenamed Evan Randolph, to be used in his behalf at the hearing of a suit in equity, now pending in said circuit court, wherein said Evan Randolph is complainant and The Quidnick Company and others are respondents, and that the counsel of said Randolph notified the counsel of record of the other parties to said suit of the time and place of taking said depositions, as appears by the notification and indorsements of counsel thereon, hereunto attached.

I further certify that I am not of counsel nor the solicitor of any party to said suit, and that I am not interested in any way whatever in the event of said suit.

Examiner's fees charged to Evan Randolph:

Notice to counsel	$1 00
Attendance, four days	12 00
Seven oaths	70
Testimony, seventy-three folios	14 60
Ten exhibits, ten folios	2 00
	$30 30

ISAAC H. SOUTHWICK, JR., *Examiner.*

259 *Testimony for Respondents.*

Depositions of witnesses produced, sworn, and examined on the 21st day of January, the 5th, 6th, and 11th days of February, the 10th day of March, and the 16th day of April, A. D. 1885, at Providence, R. I., under and by virtue of a commission, hereunto attached, issued out of the circuit court of the United States within and for the Rhode Island district, in a suit in equity, now pending in said court, wherein Evan Randolph is complainant and The Quidnick Company and others are respondents, as follows:

Deposition of Zechariah Chafee.

ZECHARIAH CHAFEE, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Quidnick Company and others, respondents in said suit, doth depose and say as follows:

Direct examination by C. FRANK PARKHURST, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Zechariah Chafee; 70 years of age; residence, Providence, R. I.; occupation, trustee engaged in the settlement of the A. & W. Sprague Manufacturing Company's estate.

Int. 2. Have you with you a printed copy of your answer in this cause as it appears of record, is the same as already sworn to by you a correct statement of the matters contained therein, and will you append the same, with such slight corrections of clerical error as may be necessary, to your deposition as a part of the answer to this question?

(It is agreed that the complainant in this cause shall have the benefit of any objection or exception which he might have taken to the evidence embodied in the answer of the witness had such witness been examined upon interrogatories separately propounded.)

I. H. SOUTHWICK, JR., *Examiner.*

Ans. Yes.

(The document referred to is hereunto attached, marked Exhibit 11.)

Int. 3. I now call your attention to the testimony of Charles B. Gould, heretofore taken in this cause, and to the various transfers of stock of the Quidnick Company appended to his deposition,
260 being transfers numbered 18 to 22, both inclusive, and transfers numbered 30 to 34, both inclusive (being Exhibits 6, 7, and 8, annexed to said Gould's deposition), and I will ask you if those transfers are the same transfers referred to by you in your testimony in an equity cause, numbered 2233, entitled "Quidnick Company *vs.* Zechariah Chafee and others," in the supreme court of Rhode Island, for Providence county, the record of which testimony in said equity cause 2233 has heretofore been stipulated in this case.

(Objected to, as immaterial and irrelevant, by William H. Baker, Esq.)

Ans. They are.

Int. 4. I now call your attention to the testimony of Amasa Sprague, heretofore taken in this cause, interrogatories 35, 36, 37 (without waiving the objections appearing upon the record to such interrogatories), which interrogatories refer to the transfers numbers 18 to 22, referred to in the last question. (The questions and answers are here read to the witness.) I will ask you if any such purpose or intention as is attempted to be indicated in said interrogatories or in said Sprague's answers thereto was ever entertained by yourself or to your knowledge or by anybody else.

(Objected to by William H. Baker, Esq., as leading, immaterial and irrelevant.)

A. There was not. The stock was transferred to me under the conditions of the trust deed and received by me in good faith for the benefit of the creditors.

Int. 5. When did you first learn that any such purpose or intention existed as indicated by Mr. Sprague in the testimony aforesaid?

(Objected to by William H. Baker, Esq., as immaterial and irrelevant.)

Ans. That question—according to the interrogatory, I don't know that I ever heard of it before. I have no recollection of having heard of it before to-day. I never heard before to-day of any such purpose or intention.

Int. 6. Were you at any time an officer of said Quidnick Company; and, if yea, what office did you hold and between what dates?

Ans. I was treasurer of the Quidnick Company for about eight years—from December, 1873, to July, 1881.

Int. 7. As such treasurer, did you have in your custody and control all the books of said Quidnick Company during those years?

261 Ans. I did, with the exception of the record and transfer books of the stockholders, which were taken away from the office during my absence by William Sprague some months previous to 1881.

(Objected to by Mr. Baker as immaterial and irrelevant.)

Int. 8. Do you or not mean to include with the books taken, as you say, by William Sprague the stock certificate book as well as the transfer book?

(Objected to by Mr. Baker as immaterial and irrelevant.)

Ans. I do.

Cross-examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. Do you mean to say that you have had no conversation with your counsel in reference to the deposition of Amasa Sprague, part of which was read to you, and in reference to the testimony of said Sprague touching the transfer of the Quidnick Company's stock to you before to-day?

Answer. I never before to-day heard of Amasa Sprague's testimony.

Int. 2. Do you mean to say that to-day is the first time you ever heard that any one claimed that the transfers of the Quidnick Company's stock to you, as hereinbefore mentioned, were made for the purpose testified to by Amasa Sprague?

Ans. I do, to the best of my knowledge.

Int. 3. How do you know that the record and transfer books and the stock certificate books of the Quidnick Company were taken away from the office during your absence by William Sprague, as you have testified?

Ans. My book-keeper, Mr. Guild, reported to me that William Sprague requested to see the books; that he laid them on Sprague's desk, and that William Sprague took them away.

ZECHARIAH CHAFEE.

Subscribed by the said Zechariah Chafee in my presence this twenty-first day of January, A. D. 1885.

I. H. SOUTHWICK, JR., *Examiner.*

262 EXHIBIT 11.

(Pages 155 to 177, inclusive.)

Referred to by Zechariah Chafee in his answer to interrogatory 2 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

Circuit Court of the United States, District of Rhode Island, *sc:*

EVAN RANDOLPH *vs.* QUIDNICK COMPANY *et als.* } In Equity. No. 2059.

(*Answer to Zechariah Chafee. Filed September* 16, 1884.)

The answer of Zechariah Chafee, one of the respondents, to the above-entitled original, amended, and supplemental bill of complaint.

This respondent, reserving unto himself all benefit and advan-

tage of exception to the many errors, inconsistencies, and insufficiencies in said bill of complaint, both as originally filed and as now amended and supplemented, contained, for answer thereunto, or to so much and such part thereof as he is advised is material and necessary for him to make answer unto, answering, says—

That he is not informed, save by said bill, whether said complainant was in the year 1873 a creditor of the firm of Hoyt, Spragues & Company, as alleged in said bill, and neither admits nor denies, but leaves said complainant to prove the same as he may be advised.

That he did receive, on the first day of December, 1873, the said indenture bearing date November 1, 1873, referred to in said bill and made a part thereof, marked "Complainant's Exhibit A," and he avers that said indenture was duly made and executed and delivered by said William Sprague, Amasa Sprague, A. & W.
263 Sprague Manufacturing Company, Fanny Sprague, Mary Sprague, and the firm of A. & W. Sprague, and this respondent did accept said indenture and join in the execution thereof, and he makes the said indenture, Exhibit A, a part of this answer.

That he denies the allegation of said amended bill, "that the said indenture was not made or executed by the said William Sprague, Amasa Sprague, the A. & W. Sprague Manufacturing Company, Fanny Sprague, and Mary Sprague."

That he admits that the said William Sprague and Amasa Sprague were each the owner of 1,082 shares of the capital stock of said Quidnick Company prior to the said first day of December, 1873.

That he is not informed, save by said bill, as to said suit at law of said complainant alleged in said bill, and as to the service and entry of said writ, the issuing of said writ of mesne process of attachment, the service thereof, and the attachments thereunder, the judgment, issue of execution, levy and service of said execution and sales thereunder, the purchase by said complainant at said auction sale, the making, execution, acknowledgment, and delivery of said deeds, and neither admits nor denies, but leaves said complainant to prove the same as he may be advised.

That he is not informed, save by said bill, whether said Waterman was a creditor of said A. & W. Sprague Manufacturing Company, as alleged, and leaves the complainant to prove the same as he may be advised.

That he admits that said Mary Sprague and Fanny Sprague were stockholders in said A. & W. Sprague Manufacturing Company, as alleged in said bill, but he is not informed whether or not they were liable for said alleged debt claimed to be due to said Waterman, and leaves the complainant to prove the same as he may be advised.

That he admits that in the year 1873 said A. & W. Sprague Manufacturing Company was the owner of 455 shares of the capital stock of the Quidnick Company, and that the said Mary Sprague was the owner of 601 shares, and the said Fanny Sprague was the owner of 802 shares of the capital stock of said Quidnick Company.

That he is not informed, save by said bill, whether the said Waterman, as alleged in said bill, applied for payment of said indebtedness, and whether said A. & W. Sprague Manufacturing Company ad-

mitted and acknowledged said indebtedness and promised to pay the same to him and to provide for the full settlement of his claim and acknowledged the justice and validity of said claim, but failed
264 to pay the same, and whether the said Waterman took all the steps in bringing suit to enforce payment of said claim and all the subsequent proceedings thereunder alleged in said bill, and whether said complainant became the purchaser of said stock and received the deeds thereof, as alleged in said bill, and neither admits nor denies, but leaves said complainant to prove the same as he may be advised.

And this respondent says that he does claim and that it is the fact that said A. & W. Sprague Manufacturing Company and said other grantors or parties of the first part in said trust conveyance, Exhibit A, were at the date thereof respectively holders and owners of large amounts of the capital stocks of various banks and other corporations, including said Quidnick Company, and also including sundry manufacturing corporations which were largely indebted or insolvent, and in which the stockholders were also personally liable for the corporation debts under the statute then in force, so that under the advice of eminent counsel, both here and from the city of Boston, called in consultation by or in behalf of the creditors, that it was or might be doubtful how far the trustee, if he took a conveyance of all such stocks, might become also personally liable for such debts, the clause was inserted in said conveyance, viz: "Excepting from this conveyance all shares of capital stock in any and every corporation, wherever located, belonging to any or either of the parties of the first part," and inserting the following agreement and covenant, viz: "The same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security to secure the performance of the conditions of this instrument," as by reference hereby had to said conveyance will fully appear, thus enabling said Chafee, as trustee thereunder, at any time or from time to time to call for the transfer to himself, as trustee and as security for the creditors under said trusts, of such stocks as he shall find of sufficient value to justify his taking the same; that accordingly, the next day after the delivery to him of said trust conveyance, he did call upon said parties of the first part, grantors therein, to transfer to him their shares aforesaid in said Quidnick Company, and said parties thereupon, on the second day of December, 1873, respectively made and executed to this respondent upon the stock transfer book of said Quidnick Company transfers of the shares of stock in said company then held by them respectively in the following form, viz:

"For value received I, —— ——, hereby transfer, by way
265 of pledge and collateral security, to Zechariah Chafee, of Providence, to secure the performance of the conditions of a trust mortgage, dated November 1, — shares of the capital stock of the Quidnick Company," the said Amasa and William thus transferring to this respondent each 1,082 shares, and the said Fanny Sprague 802 shares, and the said Mary Sprague 601 shares, and the said A. & W. Sprague Manufacturing Company 455 shares, thus together making the 4,022 shares aforesaid, and which are of the

par value of one hundred dollars per share: that, to further protect the interest of the creditors in said shares and secure to the creditors the full benefit thereof, said parties, on the twenty-second day of December, 1873, by transfers duly made and executed by them respectively upon said stock transfer book of said Quidnick Company, transferred and assigned their respective remaining right, title, and interest and equity of redemption in said shares so held by them respectively as follows: The said Amasa Sprague, William Sprague, Mary Sprague, and said A. & W. Sprague Manufacturing Company each transferred to said Fanny Sprague their respective shares, in trust for the equal benefit of all their respective creditors, and the said Fanny Sprague in like manner transferred her remaining right, title, and interest in her shares aforesaid to the said Mary Sprague, in trust for the equal benefit of all her creditors; all which by reference to said stock transfer book of said Quidnick Company, to which for the transfers aforesaid when produced in court this respondent craves leave to refer as part of this answer, will fully appear.

And this respondent, further answering, says—

That he denies that the said Waterman never in any way assented to, ratified, or affirmed the said indenture, Exhibit A, or any transfers, conveyances, or proceedings thereunder; but this respondent is informed and believes and avers it to be true that the said Waterman was present at the general meeting of the creditors of the A. & W. Sprague Manufacturing Company, hereinafter referred to, when the trust mortgage, Exhibit A, and the scheme of extension and settlement proposed to be carried out thereunder were approved by the creditors; that he took part in said meeting as a creditor of said A. & W. Sprague Manufacturing Company and did not then nor at any other time protest against the carrying out of said scheme, but did then acquiesce and at all times since down to the time of the commencement of said suit at law, for the space of more than eight years, has acquiesced in said plan or scheme of settlement; has recognized this respondent as trustee of said A. & W. Sprague Manufacturing Company under said trust mortgage from time
266 to time and at all times since the execution and delivery thereof and down to the time of commencement of said suit at law.

That the said complainant has never from the time of the execution of said trust mortgage, Exhibit A, and the said transfers of said stock made in pursuance of the terms and provisions thereof, as above set forth, down to the time of suing out his said writ of mesne process, to wit, for the space of more than eight years, taken any step to disaffirm or set aside said conveyances, although well knowing the same to have been made as aforesaid, and is now by his own laches barred from attacking or attempting to invalidate the same.

And this respondent denies that the said indenture, Exhibit A, and the said transfers of said stock above set forth were and are as against said complainant and said Waterman null and void, both by the general law and by the provisions of the General Statutes of Rhode Island, chapter 162, section 1, and of the Public Statutes of Rhode Island, chapter 173, section 1.

And this respondent avers that the said indenture, Exhibit A, was made in good faith by the grantors and the grantee therein named for the purpose of devoting and applying the property of the A. & W. Sprague Manufacturing Company and the other grantors therein named for the equal benefit of all their creditors and for no other purpose, for the reasons, in the manner, and under the circumstances following, to wit: The A. & W. Sprague Manufacturing Company owned and possessed properties of great extent and value in this State and other States and were extensively engaged in business of various kinds, namely, in the manufacture of print cloths and prints, and were owing debts to a very large amount, and in or about the month of October, A. D. 1873, became embarrassed and unable to meet their pecuniary obligations at maturity. On the first day of December, A. D. 1873, at the special request of Amasa Sprague, Mary Sprague, Fanny Sprague, and the parties representing William Sprague and the A. &. W. Sprague Manufacturing Company, this respondent accepted the position of mortgagee in trust of all the Sprague estates, individual and corporate, for the benefit of the creditors. A copy of the deed so accepted by this respondent and executed by the A. & W. Sprague Manufacturing Company, William Sprague, Amasa Sprague, Mary Sprague, Fanny Sprague, and the copartnership of A. & W. Sprague is attached to the bill of complaint in this cause and marked "Exhibit A" and is made a part of this answer.

267 Afterwards, on the 6th day of April, A. D. 1874, the said corporation, the A. & W. Sprague Manufacturing Company, the said Amasa Sprague, the said William Sprague, and the copartnership known as A. & W. Sprague severally executed to this defendant, in trust for the benefit of their respective creditors, voluntary deeds of assignment of all their property and estate, as will appear from copies of such assignments, marked, respectively, Exhibits 2, 3, 4, 5, annexed to and made a part of this answer. Under the said trust mortgage and deeds of assignment above mentioned this respondent has acted as trustee and assignee of all the Sprague properties from that time to the present, and is now acting in those capacities.

The trust mortgage above referred to was the result of careful preparation on the part of the legal counsel of a committee of the Sprague creditors, and met with the approval of such committee. When the A. & W. Sprague Manufacturing Company first felt the pressure of financial embarrassments, in apprehension of the necessity of suspending payment unless pecuniary assistance was promptly afforded, it called a conference of the presidents of the leading banks in the city of Providence, which held the obligations of the corporation, and requested a loan of money, to be secured by a mortgage on the Sprague property.

A committee of examination appointed at this conference reported adversely to this plan, in consequence of doubts entertained by them, under the advice of their counsel, as to the validity of a mortgage under the circumstances, in view of the provisions of the then existing bankrupt act.

A committee was then appointed to make examination into the affairs of the corporation and its indebtedness, which committee made report on or about the first day of November, 1873, recommending the execution of a trust mortgage, which had been in the meantime prepared and which in tenor and effect was substantially the same as "Exhibit A," attached to the bill of complaint. Afterwards a general meeting was called, upon notice through the newspapers in Providence and elsewhere, for the creditors to meet at the city of Providence on the 6th of November, 1873. This meeting was very largely attended. The trust mortgage which had been prepared was submitted to the meeting and approved, and Rufus Waterman, Amos D. Lockwood, and George C. Nightingale were designated as trustees. These gentlemen so designated as trustees employed eminent counsel in Boston, New York, and Providence to revise the form of the trust mortgage, specially with reference to protecting the trustees against personal liability in the anticipated business of operating as trustees the manufacturing properties for the benefit of the creditors.

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About three weeks elapsed in the effort to make the trust conveyance satisfactory to the gentlemen designated by the creditors to act as trustees, and finally, on the 29th day of November, 1873, they addressed a letter to William J. King, Esq., chairman of the creditors' meeting, wherein they stated that they could not see their way clear to accept the trust, but, under the advice of counsel, must decline to do so unless the Sprague creditors should, in advance of their acceptance of the trust, take some action to protect them against personal liability. A copy of this letter is hereunto annexed and made a part hereof, marked "Exhibit 1." Thereupon the officers of the A. & W. Sprague Manufacturing Company and all the said stockholders, with the exception of William Sprague, who had absented himself from the city of Providence during the whole period of the Sprague embarrassment, earnestly solicited this respondent to accept the office of trustee under the mortgage, and, as hereinbefore stated, this defendant complied with such request, and immediately entered upon the discharge of the duties of said office, and from the 1st day of December, 1873, to the present time has devoted his entire time and best capacity to the management of the complicated business which devolved upon him.

And, as to the said transfer of stock above set forth, this respondent says that the same were made in good faith, in pursuance of the terms of said indenture, "Exhibit A," and for the purpose and with the intent only of applying and devoting said stock of said Quidnick Company to the payment of the indebtedness of said parties, according to the agreement and arrangement above set forth between the said creditors and the said debtors.

And the respondent denies that by reason of any matter or thing or by virtue of any proceeding set forth in said bill said complainant became the owner of the whole or any part of said shares of stock of said Quidnick Company as against the title of this defendant above set forth, or entitled thereto or to have the same or any

part thereof transferred to him or a certificate thereof and therefor issued to him, and further avers that if any such pretended levies of execution and sales thereunder were made, as alleged in said bill, the same and each of them were and was entirely irregular, without authority of law, and void.

And, as to the allegations of said supplemental bill, this respondent denies that the said Quidnick Company has by any
269 proper lawful action or at any legal meeting thereof or in any lawful way or manner whatsoever recognized the title of said complainant to said 4,022 shares of said stock, or has duly and lawfully issued to said complainant any certificate therefor; but admits that said complainant did hold a paper purporting to be a certificate of said shares of said stock, as alleged in said bill; and this respondent admits the said proceedings before said supreme court of said State of Rhode Island which resulted in the appointment of said Gorham P. Pomroy assignee.

And this respondent, further answering generally to said bill of complaint, avers and charges as follows:

That while said proceedings in said several petitions set forth in said bill which resulted in said appointment of said Pomroy assignee as aforesaid were pending in said supreme court, and while the orders made therein by said court were in full force and effect, the said William Sprague, Amasa Sprague, Fanny Sprague, Mary Sprague, and A. & W. Sprague Manufacturing Company, and the said complainant, Evan Randolph, and one J. Cooke Longstreth, fraudulently conspiring together and with the intent and design to prevent said stock so held by said Mary and Fanny Sprague, as assignees as aforesaid, from coming into the possession of said Pomroy, and for the purpose of throwing a cloud upon his title to said stock, and with the further purpose and design of fraudulently preventing the decrees of said supreme court from being executed, caused this suit in equity to be commenced on or about the 2d day of August, 1883, in this court; that the said defendants, the said William Sprague, Amasa Sprague, Mary Sprague, Fanny Sprague, the said A. & W. Sprague Manufacturing Company, the said Evan Randolph and J. Cooke Longstreth further conspiring to defraud the creditors of said A. & W. Sprague Manufacturing Company, and of William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague, and to throw a cloud upon the title of the said Pomroy and of this respondent to said stock, and to prevent the execution of said decree of said supreme court, caused, as this respondent is informed, the said Fanny Sprague, as assignee of the said William Sprague, Amasa Sprague, Mary Sprague, and A. & W. Sprague Manufacturing Company of said stock as aforesaid, and the said Mary Sprague, as assignee of said Fanny Sprague of said stock as aforesaid, while the orders made in said petition were in full force and uncomplied with, to transfer upon the stock transfer book of said Quidnick Company the entire 4,022 shares of said stock held by the said Fanny
270 Sprague and Mary Sprague, as assignees as aforesaid, to said complainant, Evan Randolph, in fraud of said Pomroy's rights in the premises, and in derogation and contempt of the orders

of said supreme court hereinbefore referred to; and this respondent further avers that no consideration whatever was paid by said Evan Randolph to said Fanny Sprague and Mary Sprague, assignees, or either of them, and that the said Evan Randolph received the said transfers from the said Fanny and Mary Sprague with full knowledge that they had no authority to convey the same, and with fraudulent intent to deprive said Pomroy of said stock and prevent him from disposing of the same for the purposes of his said trust as assignee as aforesaid, and with full knowledge of the pendency of said petitions in said supreme court and of the orders therein made; and subsequently, to wit, on or about the 6th day of August, 1883, conspiring and fraudulently combining with the same William Sprague, Amasa Sprague, Mary Sprague, and Fanny Sprague and the A. & W. Sprague Manufacturing Company to defraud said Pomroy of his right to said stock and to throw a cloud upon his title thereto, procured the said William Sprague, claiming to be the president of said Quidnick Company, to issue to him, the said Randolph, a certificate under the seal of said Quidnick Company of 4,022 shares of the capital stock of said company in the following form.

No. 43.

Quidnick Company, Providence, R. I.

Capital, $500,000. Incorporated 1862. 5,000 shares, $100 each.

This is to certify that Evan Randolph, of Philadelphia, is the owner at the date hereof of four thousand twenty-two shares of capital stock of the Quidnick Company, transferable only upon the books of the said company, at their office, in Providence, R. I.

WILLIAM SPRAGUE, *President.*

W. SPRAGUE, *Secretary.*

Providence, R. I., Aug. 6, 1883.

271 And this respondent avers that the said pretended certificate was issued without authority of said Quidnick Company, and is wholly void and of no effect, and was fraudulently issued by those claiming to be officers of said Quidnick Company, signing the same with the purpose and intent of preventing said Pomroy from obtaining possession of said stock, and to throw a cloud upon his title thereto and embarrass him in the execution of his trusts as assignee as aforesaid.

And this respondent avers that the said Evan Randolph and J. Cooke Longstreth, with the concurrence and assent of the said William, Amasa, Mary, and Fanny Sprague and the said A. & W. Sprague Manufacturing Company, without any notice to or knowledge of any of the rightful stockholders of said Quidnick Company, have at some time and place to this respondent unknown held some pretended meeting of said Quidnick Company, and claim to have elected the said Evan Randolph as president and the said J. Cooke Longstreth as secretary of said Quidnick Company, and in violation

of law caused the records of transfers of stock of said Quidnick Company and the record book of the meetings of said Quidnick Company to be removed without this State to the State of Pennsylvania.

And this defendant further avers that at a meeting of said Quidnick Company held on the first day of September, 1883, at the office of said Pomroy, in the city of Providence, at which said Pomroy, representing said 4,022 shares of said stock of said Quidnick Company, and said Claudius B. Farnsworth, administrator in Rhode Island of the estate of Edwin Hoyt, deceased, representing 327 shares of said stock, being the entire number of shares of stock of said company now outstanding, by an unanimous vote of all said stockholders it was voted that all the offices of said company be declared vacant, this said vote being passed in compliance with the provisions of the charter of said company, and that at the same meeting, by a like unanimous vote, Stephen Harris, of Warwick, in said State, was elected president and Charles B. Gould, of said Providence, was elected secretary and treasurer of said company; and the respondent avers that said persons are now by virtue of said election the legal and duly qualified officers of said company.

And this respondent further avers that the said defendant, Quidnick Company, on or about the 15th day of March, A. D. 1884, and before the answers became due in this cause, filed in said supreme court of Rhode Island, for the county of Providence, its bill of interpleader in equity, No. 2233, against this respondent Chafee, trustee and assignee as aforesaid, and Gorham P. Pomroy, assignee,
272 and against said complainant, Evan Randolph, and against Thomas C. Greene, receiver of the Franklin Institution for Savings, setting forth that said Quidnick Company, having sold all its property and discontinued its business of manufacturing, had declared a stock dividend in liquidation, payable to its stockholders out of the funds derived from said sales; that said defendants in said bill named each made claim to the whole or parts of said 4,022 shares of said stock of said Quidnick Company, and praying that said defendants might be ordered to set forth their several claims of title to said shares of stock, and to interplead as to the said titles in order that said court might determine in whom the title to said 4,022 shares of stock was vested and to whom the said dividends thereon ought to be paid, and that thereupon subpœnas were duly issued and personally served on said Randolph, complainant in this suit, and upon said other defendants; yet said Randolph, wholly disregarding the same, neglected and refused to answer said bill of interpleader, and that thereafter, on the 1st day of May, A. D. 1884, said court entered its decree in said cause, adjudging that the said "Evan Randolph has no claim, right, title, or interest in or to the said 4,022 shares of the capital stock of said Quidnick Company," and "has no right, title, or interest in the said dividends declared thereon," and enjoined said Randolph from asserting any title or claim thereto and from commencing actions or suits to recover said dividend; that said defendants, Chafee and Pomroy, did duly appear and answer the said suit and were ordered to interplead therein, a sum sufficient to pay said dividend on said 4,022 shares being in the

registry of said court, and said court having jurisdiction over the same and over all parties to the cause, including this complainant, and over all questions involved therein; and having by their said several answers duly set forth their said claims of title to said 4,022 shares of stock, proceeded to take testimony in said cause in support of their said claims, and thereupon submitted their claims to said supreme court; and that thereupon said court, after full hearing and consideration of the pleadings and testimony in said cause, by its decree entered in said cause on the 2nd day of June, A. D. 1884, adjudged that this defendant Chafee, by virtue of his title as pledgee of said 4,022 shares of stock (being the same title hereinbefore set forth in this answer), was "entitled as the lawful owner thereof" to receive the dividend declared thereon, and that said defendant Pomroy, assignee as aforesaid, held his said title as assignee subject to the title of said Chafee; and this respondent craves leave to
273 submit as a part of his answer a certified copy of the record of said suit in equity, No. 2233, at the hearing of this cause.

And this respondent prays the same benefit and advantage of the aforegoing allegations and averments relative to said suit in equity, No. 2233, as if the same had been set up by way of plea in this cause.

And this respondent says that he is informed and believes, and upon information and belief avers and charges, that this cause was originally brought and is now being prosecuted in the name of said complainant, Evan Randolph, for the benefit of the said William Sprague and for the benefit of the said other Spragues hereinbefore mentioned or some of them, and for the purpose and with the intent of enabling the said Spragues, in the event of the success of the cause, to defraud their said creditors of their rights to said shares of stock and to hold said shares of stock for their own benefit.

And this respondent, further answering, says that the said Quidnick Company, acting as in duty bound upon the said decree of said supreme court in said cause in equity, No. 2233, hereinbefore recited, has, since the date thereof and before any process was served upon this respondent in said second supplemental bill, paid over to this respondent said sum of money so deposited in the registry of said court as aforesaid and another stock dividend in liquidation similarly declared by said company, relying upon the finality and conclusiveness of the said decree, amounting in all to the sum of $145 per share upon said 4,022 shares of said stock, and 55½ dollars per share payable in the Sprague mortgage notes, so called, at their original face value; and this respondent, as in duty bound under his said trust, has received the same prior to any service of process upon him in said second supplemental bill as aforesaid, and has distributed the said sums of money so received to the said creditors under his said trusts.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material and necessary for this respondent to make answer unto and not herein and

hereby well and sufficiently answered, confessed, traversed and avoided or denied which is true, to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove as this honorable
274 court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ZECHARIAH CHAFEE.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHAS. HART,
BENJ. F. THURSTON,
Solicitors and of Counsel for Z. Chafee.

UNITED STATES OF AMERICA, }
Rhode Island District, Providence, } *ss:*

In the city of Providence, on the 13th day of September, A. D. 1884, before me, a notary public duly, commissioned, in and for the State of Rhode Island, personally appeared Zechariah Chafee, subscriber to the foregoing answer, and made oath that the statements made in said answer as of his own knowledge are true, and those made therein as to his own information and belief he verily believes to be true, and that the plea therein embodied is not interposed for delay and is true in point of fact.

Witness my hand and official seal, at said Providence, in said district, the day and year aforesaid.

C. FRANK PARKHURST,
Notary Public.

This is to certify that in our opinion the plea embodied in the foregoing answer is well founded in point of law.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHAS. HART,
BENJ. F. THURSTON,
Solicitors and of Counsel for Z. Chafee.

EXHIBIT 1.

Wm. J. King, Esq., chairman, &c.:

We have given to the proposed deed of trust of the Sprague property, to be executed by us as trustees, the most careful consideration, with an earnest desire to see our way clear to accept the same,
275 but, acting under the advice of counsel, we must decline to do so, unless creditors, by some previous action on their part, will protect us against personal liability.

Very respectfully,

RUFUS WATERMAN.
A. D. LOCKWOOD.
GEO. C. NIGHTINGALE.

Providence, November 29, 1873.

EXHIBIT 2.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island and transacting business in the city of Providence, of the first part, and Zechariah Chafee, at said Providence, of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Company is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating its estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W. Sprague Manufacturing Company, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to it paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all our right, title, and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims of creditors against us, the A. & W. Sprague Man-
276 ufacturing Company, which have been or shall within nine months of the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same, under the provisions of said deed of mortgage dated November 1, 1883, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise ratably, the obliga-

tions to our creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works, or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interest of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby except [accept] said trust and doth in consideration thereof covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof said A. & W. Sprague Manufacturing Company has caused these presents to be signed and its corporate seal to be hereto affixed by Amasa Sprague, its treasurer, for this purpose fully authorized, and said Zechariah Chafee has hereto set his hand and seal this sixth day of April, eighteen hundred and seventy-four.

A. & W. SPRAGUE M'F'G CO.,
Per AMASA SPRAGUE, *Tr.*
ZECHARIAH CHAFEE.

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

277 STATE OF RHODE ISLAND, ETC., } *ss:*
City and County of Providence, }

Be it known that in said city of Providence, this seventh day of April, A. D. 1874, before me, Charles Selden, a justice of the peace for the said city of Providence and a notary public for said State of Rhode Island, residing in said city of Providence, personally appeared Amasa Sprague, personally known to me to be the same person who executed the aforegoing instrument as treasurer, and in his capacity as treasurer acknowledged to me that he signed, sealed, executed, and delivered this said instrument as, and that the same is, his free and voluntary act and deed as such treasurer and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company for the uses and purposes therein mentioned and expressed.

In testimony whereof I have hereunto set my hand and official seal, at said city of Providence, on this said seventh day of April, A. D. 1874.

CHARLES SELDEN,
Justice of the Peace and Notary Public.

EXHIBIT 3.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague, of Cranston, county of Providence, State of Rhode Island, of the first part, and

Zechariah Chafee, of Providence, county of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said Amasa Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said Amasa Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all his right, title, and interest, legal or equitable, in or to

all the property of the grantor described or referred to in the
278 trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real and personal or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust; to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against the said Amasa Sprague provided for in said trust deed of mortgage of November 1, 1873, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said mortgage trust, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same under the provisions of the said deed of mortgage dated November 1, 1873, or this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other claim; and said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors, and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose — any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid, and in case the same are thus run by him or otherwise he shall not be liable personally for the ex-

penses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he
279 will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof I have hereunto set my hand and seal this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this seventh day of April, A. D. 1874, then Amasa Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—
[L. S.] CHARLES SELDEN,
Notary Public.

Recorded May 8, 1874, at 9.30 a. m.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office in Book No. 248, page 311.
Attest: G. A. WILLIAMSON,
Recorder of Deeds.

280 EXHIBIT 4.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague, of Cranston, county of Providence and State of Rhode Island, and William Sprague, of South Kingston, county of Washington and State of Rhode Island, copartners as A. & W. Sprague, of the first part, and Zechariah Chafee, of the city of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said A. & W. Sprague are now indebted or under liability, primary or secondary, in divers sums of money to divers persons and are desirous of appropriating their estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W. Sprague, for and in consideration of the said debts and liabilities and also in consideration of the sum of one dollar to them paid by the

said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all their right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantors and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against us (A. & W. Sprague) which have or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same, under the provisions of the said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

281 And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors, and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of — and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to our creditors within a reasonable time.

And the said trustee is further authorized to run said mills and print works or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interest of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him, or otherwise, he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof we have hereunto set our hands and seals

this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
WILLIAM SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

282 THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this sixth day of April, A. D. 1874, then Amasa Sprague, William Sprague, and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—
[L. S.] CHARLES SELDEN,
Notary Public.

Recorded May 8, 1874, at 9.30 a. m.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *November* 29, 1880.

A true copy of record in this office, in Book No. 248, page 313.
Attest: G. A. WILLIAMSON,
Recorder of Deeds.

EXHIBIT 5.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-five, by and between William Sprague, of South Kingston, county of Washington, State of Rhode Island, of the first part, and Zechariah Chafee, of Providence, of the second part, witnesseth:

Whereas the said William Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said William Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by
283 these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all his right, title, and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of

every name and nature, wherever situate, not exempt from the attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against the said William Sprague provided for in said trust deed of mortgage of November 1, 1873, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time for a part or the whole of the same under the provisions of said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time.

And the said trustee is further authorized to run said mills and print works, or either or any of them, or to allow the grantor to run the same, or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid, and in case the same are thus run
284 by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be charged to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth in consideration thereof covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them an [as] early and full payment upon their said claim as he shall reasonably be able to do.

In testimony whereof I have hereunto set my hand and seal this sixth day of April, one thousand eight hundred and seventy-four.

WILLIAM SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this 6th day of April, A. D. 1874, then William Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—

[L. S.] CHARLES SELDEN,
Notary Public.

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, L. P. Williams, notary public for said District and county, do hereby certify that William Sprague, party to a certain deed bearing date on the 6th day of April, A. D. 1874, and hereto annexed, personally appeared before me in the county aforesaid, the said William Sprague being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

285 Given under my hand and notarial seal this 15th day of April, A. D. 1874.

[L. S.] L. P. WILLIAMS,
Notary Public.

Recorded May 11th, 1874, at 10.15.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office, in Book No. 248, page 315.
Attest: G. A. WILLIAMSON,
Recorder of Deeds.

Stipulation No. 1.

It is agreed that Zechariah Chafee aforesaid was not present in person at the general meeting of the creditors of the A. & W. Sprague Manufacturing Company held in the city of Providence in the month of November, 1873, and does not know, otherwise than by information and belief, whether Horatio N. Waterman, under whom the complainant claims title to certain stock in the Quidnick Company, was present as one of such creditors and took part in said meeting, and did not dissent to the scheme of payment, settlement, and extension proposed to be carried out under the trust deed marked "Complainant's Exhibit A," annexed to complainant's bill; and that said Chafee derived such information from the deposition of the said Horatio N. Waterman on file in this cause.

Witness, in the presence of the counsel in the cause making the foregoing stipulation—

ISAAC H. SOUTHWICK, JR., *Examiner.*

286 *Deposition of Gorham P. Pomroy.*

GORHAM P. POMROY, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Quidnick Company and others, respondents in said suit, doth depose and say as follows:

Direct examination by CHARLES H. PARKHURST, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Gorham Parks Pomroy; age, 50; residence, Providence, R. I.; occupation, coal dealer.

Int. 2. Are you one of the respondents in the present suit?

Ans. I am.

Int. 3. Were you appointed by the supreme court of the State of Rhode Island as assignee in place of Fanny Sprague and Mary Sprague, removed by said court, of 4,022 shares of the capital stock of the Quidnick Company; and, if so, will you please annex to your answer certified copies of the decrees so appointing you?

Ans. I was. These are the decrees referred to.

(The decrees referred to are hereunto annexed, marked Exhibits 12 to 16, inclusive.—I. H. Southwick, Jr., examiner.)

Int. 4. After the date of those decrees down to the present time did you act as a stockholder of the Quidnick Company?

Ans. I did.

Int. 5. What arrangements or agreement or combination did you at any time enter into with the respondents, Claudius B. Farnsworth, Charles B. Gould, Stephen Harris, and the Union Company, to dispose of the manufacturing property of the Quidnick Company to the Union Company for the purpose of depreciating the value of the complainant's stock in said company, or to prevent his selling the same for anything like its true value, or to prevent the complainant from receiving any dividends on said stock, or to deprive the complainant of his rights and privileges as a stockholder in said Quidnick Company, or to divert the assets and property of said
287 Quidnick Company from their legitimate use to an unlawful purpose? Please state fully what arrangement, agreement, or combination you made in reference to matters inquired of.

Ans. None whatever.

Int. 6. To your knowledge, has the complainant, Evan Randolph, since the date of your appointment as assignee as aforesaid, ever attended any meeting of the stockholders of the Quidnick Company?

Ans. Not to my knowledge.

Cross-examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. Were you present at the meeting held the first day of September, 1883, and did you vote as a stockholder of the Quidnick Company to remove Evan Randolph and J. Cooke Long-

streth as president and treasurer of said company, and substitute Stephen Harris and Charles B. Gould as the officers of said company?

Answer. I was present at that meeting and voted to remove William Sprague as president, William Sprague as treasurer, and that the offices of president and treasurer be declared vacant.

Int. 2. Who else was present and voted as a stockholder in said Quidnick Company at that time?

Ans. Claudius B. Farnsworth, as administrator of the estate of Edwin Hoyt, representing 327 shares.

Int. 3. When were Stephen Harris and Charles B. Gould elected as president and treasurer of said Quidnick Company, as is claimed?

Ans. On the same date, September first, 1883.

Int. 4. Who voted as stockholders in said Quidnick Company to elect these last-named gentlemen to said offices?

Ans. Mr. Farnsworth and myself.

Int. 5. Did you at that time hold any certificate of stock showing that you were the holder or owner of 4,022 shares of the Quidnick stock, or any proxy authorizing you to vote on said 4,022 shares of said Quidnick stock, and had there been any transfer of stock upon the books of the corporation of said 4,022 shares of stock to you?

Ans. Not to my knowledge, but I had the order of the supreme court in my pocket.

Int. 6. To your knowledge, had Mr. Farnsworth, at the time said meeting was held, any certificate of stock showing him to be the holder or owner of 327 shares of the Quidnick Company stock or any proxy authorizing him to vote on said 327 shares of stock, or had there been any transfer of stock on the books of the corporation of such stock to him?

288 Ans. Not to my knowledge.

Int. 7. When was it voted to sell the property of the Quidnick Company, and who was present and voted as stockholders in said company to sell the same?

Ans. December eleventh, 1883; Mr. Farnsworth and myself as stockholders.

Int. 8. At the time did either of you hold a certificate of stock or any proxy authorizing you to vote as stockholders in said Quidnick Company, or had there been any transfer of stock to either of you on the books of said corporation?

Ans. Not to my knowledge.

Int. 9. Since that time has there been any transfer on the books of said company of stock in said company to either of you, or do either of you hold any certificate of stock in said company at the present time?

Ans. Not to my knowledge.

Int. 10. For what purpose was it voted to sell the property of the Quidnick Company?

Ans. To close up the property by decree of the supreme court.

Int. 11. Is that the only reason why it was voted to sell said property?

Ans. I know of no other, except to distribute the proceeds to the creditors.

Int. 12. At that time did you not know that there were several suits pending touching the ownership of the stock in the Quidnick Company or a large portion thereof, which must tend to throw a cloud upon the title of the property of the Quidnick Company, which depreciated the market value of such property, so that the same could not then be sold to advantage?

Ans. I did not.

Int. 13. Did you not know of the pendency of the suits referred to?

Ans. No, sir; I did not.

Int. 14. At the time you voted for the removal of William Sprague and W. Sprague as the officers of the Quidnick Company, did you not know that Evan Randolph and J. Cooke Longstreth were the legally elected officers of said Quidnick Company, or claimed to be?

Ans. I knew they so claimed to be.

Int. 15. Did you not know that at the time you voted to authorize the sale of the property of the Quidnick Company that
289 William Sprague was in possession of the same as the agent for said Randolph and Longstreth as the officers of said company?

Ans. I did not.

Int. 17. Did you not know at the time you voted for the removal of William Sprague and W. Sprague as officers of said Quidnick Company that Evan Randolph claimed to be the holder and owner of 4,022 shares of stock in said company, and that a bill was pending in the circuit court of the United States for the district of Rhode Island, on the equity side thereof, to establish his title to said shares of stock?

Ans. I did know that he set up a claim to it. I did know that a bill was pending, and the only bill or suit I had any knowledge of at that time.

Int. 17. Did you not know at that time that a bill in equity was pending in the supreme court of Rhode Island, filed by Zechariah Chafee, to establish his title to said 4,022 shares of Quidnick Company stock, as trustee and assignee under the trust deed and assignment made by the Spragues and the A. & W. Manufacturing Company, and marked "Complainant's Exhibit A?"

A. I did not at that time.

Int. 18. Do you know, of your own knowledge, whether Horatio N. Waterman was present at a general meeting of the creditors of the A. & W. Sprague Manufacturing Company held in the city of Providence, in the month of November, 1873, when the said trust deed marked "Complainant's Exhibit A" and the scheme of payment, settlement, and extension proposed to be carried out thereunder were presented to and approved by said creditors; that said Waterman took part in said meeting as such creditor and did not object to the carrying out of such scheme?

Ans. I do not.

Redirect examination by CHARLES H. PARKHURST, Esq.:

Int. 7. Were you present at the sale of the real estate of the Quid-

nick Company, on the tenth of January, 1884, at the office of William H. Hall, in the city of Providence?

Ans. Yes, sir.

Int. 8. Do you remember whether or not Mr. William H. Baker, the present counsel of record for the complainant, Evan Randolph, in this suit, was present at that sale?

290 Ans. It is my opinion that he was present.

Int. 9. Did he or any other person claiming to represent Mr. Evan Randolph, the complainant, give any notice to the persons there present of any claims of Evan Randolph, the complainant, to any of the capital stock or property of the Quidnick Company?

Ans. Not to my knowledge.

Int. 10. Were you there during the entire time the sale was going on until the property had been stricken off?

Ans. I was.

Int. 11. State how many persons were present at the sale.

Ans. Well, the room was crowded full. I should say a hundred or more.

Int. 12. State how the bidding was; active or otherwise.

Ans. Active—eight or ten taking part.

Int. 13. How, in your opinion, did the price for which the property was sold compare with its actual market value?

(Objected to by William H. Baker, Esq., on the ground that the witness is not an expert, and that no foundation has been laid for the question.)

Ans. In my opinion, the same property at public auction would not have brought, within the last nine months, within ten or twenty per cent. what it brought at the time of the sale.

Recross-examination by WILLIAM H. BAKER, Esq.:

Int. 19. Are you a stockholder in the Union Company; and, if yea, how many shares of stock do you own?

Ans. Yes; one hundred and twenty-five.

Int. 20. Were you a stockholder in said Union Company at the time of the sale of the Quidnick property, January 10, 1884?

Ans. Yes, sir.

Int. 21. Did or did not said Union Company purchase all the property of the Quidnick Company sold on that day?

Ans. They did.

Int. 22. Is Stephen Harris, to your knowledge, a stockholder in said Union Company; and, if yea, was he such on January 10, 1884, and how many shares of stock did he or does he own?

Ans. He never was a stockholder of the Union Company.

GORHAM P. POMROY.

291 Subscribed by the said Gorham P. Pomroy in my presence this fifth day of February, A. D. 1885.

ISAAC H. SOUTHWICK, JR., *Examiner.*

EXHIBIT 12.

Referred to by Gorham P. Pomroy in his answer to interrogatory 3 of his foregoing direct examination.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

PROVIDENCE, *sc:*

NATIONAL BANK OF COMMERCE *et als.*
vs.
FANNY SPRAGUE, Assignee of William Sprague. } M. T. No. 1888.

AUGUST 25, 1883.

This cause came on to be heard before the court upon the pleading and evidence, and counsel were heard thereon, and upon consideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondents, and that all parties interested therein had been notified by publication, as required by the order of the court herein, and that said Fanny Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Fanny Sprague, assignee of William Sprague of 1,082 shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said William Sprague; and it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, — county, be, and he hereby is, appointed assignee of said William *in said* Sprague of said 1,082 shares of said stock of said Quidnick Company, with all the powers and subject to all the liabilities set forth in chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25, 1883.

By order: HERBERT ALMY,
Assistant Clerk.

A true copy.

Attest: [L. S.] HERBERT ALMY,
Assistant Clerk.

292 EXHIBIT 13.

Referred to by Gorham P. Pomroy in his answer to interrogatory 3 of his foregoing direct examination.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

PROVIDENCE, *sc:*

Supreme Court, August 25, 1885.

NATIONAL BANK OF COMMERCE
vs.
FANNY SPRAGUE, Assignee of Amasa Sprague. } M. T. No. 1888.

This cause came on to be heard before the court upon the pleadings and evidence, and counsel were heard thereon, and upon consideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondent, and that all parties interested therein had been notified by publication, as required by the order of the court herein, and that said Fanny Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Fanny Sprague, assignee of Amasa Sprague of one thousand and eighty-two shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said Amasa Sprague of said one thousand and eighty-two shares of said stock; and it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, in said county, be, and he hereby is, appointed assignee of said Amasa Sprague of said one thousand and eighty-two shares of said stock, with all the powers and subject to all the liabilities set forth in chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25, 1883.
By order: HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest: [L. S.] HERBERT ALMY,
Assistant Clerk.

293 EXHIBIT 14.

Referred to by Gorham P. Pomroy in his answer to interrogatory 3 of his foregoing direct examination.
Attest: I. H. SOUTHWICK, JR., *Examiner.*

PROVIDENCE, *sc:*

Supreme Court, August 25, 1883.

NATIONAL BANK OF COMMERCE and Others
vs.
FANNY SPRAGUE, Assignee of the A. & W. Sprague Manufacturing Company. } M. T. No. 1888.

This cause came on to be heard before the court upon the pleadings and evidence, and counsel were heard thereon, and upon consideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondent, and that all parties

interested therein had been notified by publication, as required by the order of the court herein, and that said Fanny Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Fanny Sprague, assignee of the A. & W. Sprague Manufacturing Company of 455 shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said A. & W. Sprague Manufacturing Company; and it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, in said county, be, and he hereby is, appointed assignee of said A. & W. Sprague of said 455 shares of said stock of said Quidnick Company, with all the powers and subject to all the liabilities set forth in said chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25, 1883.

By order: HERBERT ALMY,
Assistant Clerk.

A true copy.

Attest: HERBERT ALMY,
Assistant Clerk.

294 EXHIBIT 15.

Referred to by Gorham P. Pomroy in his answer to interrogatory 3 of his foregoing direct examination.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

PROVIDENCE, *sc:*

Supreme Court, August 25, 1883.

SECOND NATIONAL BANK and Others
vs.
FANNY SPRAGUE, Assignee of Mary Sprague. } M. T. No. 1891.

This cause came on to be heard before the court upon the pleadings and evidence, and counsel were heard thereon, and upon consideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondent, and that all parties interested therein had been notified by publication, as required by the order of the court herein, and that said Fanny Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Fanny Sprague, assignee of Mary Sprague of 601 shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said Mary Sprague; and it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, in said county, be, and he hereby is, appointed assignee of said Mary Sprague of said 601 shares of said stock of said Quidnick Company, with all

the powers and subject to all the liabilities set forth in chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25, 1883.

By order: HERBERT ALMY,
Assistant Clerk.

A true copy.

Attest: [L. S.] HERBERT ALMY,
Assistant Clerk.

295 EXHIBIT 16.

Referred to by Gorham P. Pomroy in his answer to interrogatory 3 of his foregoing direct examination.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

PROVIDENCE, *sc:*

Supreme Court, August 25, 1883.

GLOBE NATIONAL BANK and Others
vs.
MARY SPRAGUE, Assignee of Fanny Sprague. } M.T. No. 1892.

This cause came on to be heard before the court upon the pleadings and evidence, and counsel were heard thereon, and upon consideration thereof, it appearing to the court that notice of the pendency thereof had been given to the respondent, and that all parties interested therein had been notified by publication, as required by the order of the court herein, and that said Mary Sprague, assignee as aforesaid, has neglected to file an inventory and give bond, as required by the decree of said court, it is ordered, adjudged, and decreed that the said Mary Sprague, assignee of Fanny Sprague of 802 shares of the capital stock of the Quidnick Company, a corporation organized under the laws of the State of Rhode Island, be, and she hereby is, removed from the said office of assignee of said Fanny Sprague.

And it is also further ordered, adjudged, and decreed that Gorham P. Pomroy, of Providence, in said county, be, and he hereby is, appointed assignee of said 802 shares of said stock of said Quidnick Company, with all the powers and liabilities set forth in chapter 237 of the Public Statutes of Rhode Island.

Entered as decree of court August 25, 1883.

By order:

HERBERT ALMY,
Assistant Clerk.

A true copy.

Attest: [L. S.] HERBERT ALMY,
Assistant Clerk.

296 *Deposition of Charles B. Gould.*

CHARLES B. GOULD, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Quidnick Company and others, respondents in said suit, doth depose and say as follows:

Direct examination by CHARLES H. PARKHURST, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Charles B. Gould; 39 years; Providence, R. I.; secretary and treasurer of the Quidnick Company and secretary and treasurer of the Union Company.

Int. 2. How long have you held the offices of secretary and treasurer of the Quidnick Company?

Ans. Ever since September first, 1883.

Int. 3. Did you at any time make any agreement or combination with the respondents, Gorham P. Pomroy, Claudius B. Farnsworth, Stephen Harris, and the Union Company, to dispose of the real estate and manufacturing property of said Quidnick Company to the said Union Company for the purpose of depreciating the value of the complainant, Evan Randolph's, stock in said company or to prevent his selling the same for anything like its true value, or to prevent said Randolph from receiving any dividends on said stock belonging to him, or to deprive him of his rights and privileges as a stockholder in said company, or to divert the assets and property of said Quidnick Company from their legitimate use to an unlawful purpose? If so, state fully what agreement or combination you made with said parties or any of them.

Ans. I did not.

Int. 4. Did the Union Company, to your knowledge, make any agreement or combination with the respondents, B. B. & R. Knight, to wrong the complainant, Evan Randolph, and the true stockholders in said Quidnick Company by complicating the title to the property of said Quidnick Company and to place said property out of the possession and control of said Quidnick Company, or to injure
297 the complainant and the stockholders of said Quidnick Company by impairing the market value of their stock and preventing them from receiving dividends and voting thereon? If so, state what agreement was made by the Union Company with B. B. & R. Knight.

Ans. Not to my knowledge.

Int. 5. Will you annex to your deposition in this case certified copies of the records of the Quidnick Company, commencing with August 31, 1883, down to and including June 6, 1884?

Ans. I will.

(The copies referred to are hereto annexed, marked Exhibit 17.)

Int. 6. Did you as treasurer of the Quidnick Company pay to

Zechariah Chafee, trustee and assignee, the dividend of twenty dollars per share upon 4,022 shares of the capital stock of said company after the decree of the supreme court in the interpleader case had been entered?

Ans. Well, that was paid into court.

Int. 7. Did you subsequently pay to said Chafee, trustee, a further dividend upon said 4,022 shares? And, if so, state what was the amount of that dividend.

Ans. I did; dividend of one hundred and twenty-five dollars per share in cash and fifty-five and one-third dollars per share in mortgage notes of the A. & W. Sprague Manufacturing Company.

Int. 8. Did the Quidnick Company on or about December 15, 1883, advertise its manufacturing property in Covington and Warwick, in this State, for sale at public auction, at the office of William H. Hall, in the city of Providence, on the tenth day of January, 1884? If so, will you please look at the paper now shown you and state if that is the advertisement of said sale?

Ans. They did. This is a copy of the advertisement.

(The copy referred to is hereunto annexed, marked Exhibit 18.)

Int. 9. To whom was said property sold at said auction sale?

Ans. To the Union Company.

Int. 10. For what price?

Ans. Well, two hundred and sixty thousand dollars, I think it was—the whole amount.

Int. 11. State whether or not that amount, 260,000 dollars, was, subsequently to the sale, paid by the Union Company to the Quidnick Company.

Ans. It was, if that was the amount paid for the property.

298 Int. 12. Did they or not pay the price to the Quidnick Company which they bid at the sale?

Ans. They did.

Cross-examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. Was there any reason that you know of why the property of the Quidnick Company was sold?

Answer. Well, I suppose because they wanted to settle the estate.

Int. 2. Who wanted to settle up the estate?

Ans. The Quidnick Company.

Int. 3. What was done with the money received by the Quidnick Company from the Union Company for the purchase of the property of said Quidnick Company?

Ans. Deposited in the bank for the time being, and afterwards dividends were declared and paid on 4,022 shares of the capital stock to Z. Chafee, trustee, and the balance was deposited in the bank—that is, less other payments made.

Int. 4. What was the amount paid to Mr. Chafee?

Ans. $583,190.

Int. 5. Where was this money derived from?

Ans. From the sale of the property, partly, and the balance from money paid over by Z. Chafee, trustee.

Int. 6. How much of the balance did you deposit in the bank after paying over said sum to Mr. Chafee?

Ans. Well, I didn't deposit any; it was in the bank before.

Int. 7. Was there any money left after the said payment to Mr. Chafee; and, if so, what amount?

Ans. There was; about $97,000 on hand at the present day.

Int. 8. What bank is that in?

Ans. I decline to answer.

Int. 9. Will you answer the previous question, or do you still persist in refusing to answer it?

Ans. The counsel for the respondent advises me not to answer the question, on the ground that the complainant in his bill shows no right to make any such inquiry of me.

Int. 10. How much did the Union Company receive from B. B. & R. Knight for the property purchased by them of said Union Company which had been acquired by said Union Company from said Quidnick Company?

299 Ans. $175,000, I think, was the amount paid. This was for the real estate.

Int. 11. What part of the property acquired by the Union Company from the Quidnick Company was sold to said B. B. & R. Knight?

Ans. The Arctic Mill estate.

Int. 12. What was done with the balance of the property purchased by the Union Company of said Quidnick Company?

Ans. Sold to William D. Davis.

Int. 13. For what consideration?

Ans. For the sum of $225,000, I think it was.

Int. 14. When was this last-mentioned property sold?

Ans. I don't remember the date.

Int. 15. Is the deed on record from the Union Company to said Davis?

Ans. I presume it is. I would not know about it myself. The sale, I think, was made last spring, and the deed, I think, was made to the Quidnick Manufacturing Company.

Int. 16. Who were the stockholders in the Union Company?

Ans. There are so many I can't remember; about 175.

Redirect examination by CHARLES H. PARKHURST, Esq.:

Int. 13. Was there not, Mr. Gould, a fund to pay the dividends declared on the 327 shares of the capital stock of the Quidnick Company claimed by Claudius B. Farnsworth as administrator and by Appleton Sturgis in the suit now pending in the circuit court of the United States, deposited under the order of that court to the credit of the case?

Ans. Well, there is a special deposit for the first dividend of twenty dollars a share.

CHARLES B. GOULD.

Subscribed by the said Charles B. Gould in my presence this fifth day of February, A. D. 1885.

ISAAC H. SOUTHWICK, JR., *Examiner.*

300 EXHIBIT 17.

(Pages 223 to 247, inclusive.)

Referred to by Charles B. Gould in his answer to interrogatory 5 of his foregoing direct examination.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

PROVIDENCE, R. I., *August* 31, 1883.

Meeting of stockholders of Quidnick Company, held at 35 Weybosset street, at 11 a. m. this day.

The meeting was convened at time and place named in a written call to William Sprague, president, signed by all the stockholders, which meeting he failed to call.

The president, William Sprague, having failed to call said meeting, G. P. Pomroy and C. B. Farnsworth, administrator, representing all the stock of said Quidnick Company, issued a call for this meeting.

The meeting was called to order by C. B. Farnsworth.

Present: G. P. Pomroy, representing four thousand and twenty-two shares, as assignee appointed by the supreme court of this State, and C. B. Farnsworth, administrator of the estate of Edwin Hoyt, representing three hundred twenty-seven shares.

T. W. Waterman was appointed clerk *pro tem.* in absence of the regular clerk of the company. Upon motion of Mr. Pomroy the meeting was adjourned until September 1, 1883, at 2 p. m., at same place.

(Signed) T. W. WATERMAN,
Clerk pro tem.

PROVIDENCE, R. I., *September* 1, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day at 35 Weybosset street, at 2 o'clock p. m.

Records of last meeting read and approved.

Present: All the stockholders, as follows: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares, and C. B. Farnsworth, administrator, representing three hundred twenty-seven shares.

301 Voted, That William Sprague be, and he is hereby, removed from his office as treasurer of the Quidnick Company.

Voted, That William Sprague be, and he is hereby, removed from the office of secretary of the Quidnick Company.

Voted, That the several offices of president, treasurer, and secretary of the Quidnick Company be, and are hereby, declared vacant.

Voted, That the certificate purporting to have been issued to Evan Randolph of four thousand and twenty-two shares of the capital stock of the Quidnick Company, dated August 6, 1883, signed by William Sprague, president, and W. Sprague, secretary, is hereby declared to be null and void and to have been issued without lawful authority.

Voted, That Gorham P. Pomroy, as assignee of William Sprague, Amasa Sprague, Fanny Sprague, Mary Sprague, and the A. & W. Manufacturing Company, is hereby declared to be the lawful owner and holder of four thousand and twenty-two shares of the capital stock of said Quidnick Company, as shown by the decrees of the supreme court of this State, and is entitled to vote thereon.

Stephen Harris was elected president of this company, and Charles B. Gould secretary and treasurer.

Voted, That the secretary be, and he is hereby, directed to demand of William Sprague, late treasurer and secretary of the Quidnick Company, or any other person holding said offices, the record book, the stock transfer book, the certificate book, and all other books and property of said company, and in case of his failure to obtain the same that application be made to the supreme court for a mandamus requiring said Sprague or other persons to deliver said books to said Quidnick Company.

Adjourned to September 3, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 3, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 4, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

302 PROVIDENCE, R. I., *September* 4, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 5, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 5, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 6, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 6, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Voted, That Benjamin F. Butler, Roger A. Pryor, Andrew B. Patton, and Jerome B. Kimball are not authorized to appear as solicit-

ors or attorneys for the Quidnick Company in any suits or proceedings pending in any courts.

Voted, That the secretary furnish to said Butler, Prior, Patton, and Kimball a copy of the foregoing vote by mail.

Adjourned to September 7, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 7, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

303 Present: Henry W. Gardner, representing, by proxy, four thousand twenty-two shares, held by Gorham P. Pomroy, assignee.

Adjourned to September 8, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 8, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Henry W. Gardner, representing, by proxy, four thousand twenty-two shares, held by Gorham P. Pomroy, assignee.

Adjourned to September 10, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 10, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Henry W. Gardner, representing, by proxy, four thousand and twenty-two shares, held by Gorham P. Pomroy, assignee.

Adjourned to September 11, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 11, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Henry W. Gardner, representing, by proxy, four thousand and twenty-two shares, held by Gorham P. Pomroy, assignee.

Adjourned to September 14, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 14, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

304 Present: Gorham P. Pomroy, assignee, representing four thousand and twenty-two shares.

Adjourned to September 15, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 15, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, in the court-house, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to 5 o'clock p. m. this day.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 15, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 5 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand and twenty-two shares.

Adjourned to September 17, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 17, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 18, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September*, 18, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 19, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

305 PROVIDENCE, R. I., *September* 19, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 20, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 20, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at Henry W. Gardner's office, in the post office, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 21, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 21, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 24, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 24, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day at 35 Weybosset street.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 25, 1883, at 9 o'clock a. m.

Attest: CHARLES B. GOULD, *Secretary.*

306 PROVIDENCE, R. I., *September* 25, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 9 o'clock a. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to September 26, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 26, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at Henry W. Gardner's office, in the post office, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to Saturday, September 29, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *September* 29, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to October 1, 1883, at 12 o'clock m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *October* 1, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 12 o'clock m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to October 3, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

307 PROVIDENCE, R. I., *October* 3, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at Henry W. Gardner's office, in the post office, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to October 6, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *October* 6, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to October 13, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *October* 13, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to October 20, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *October* 20, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to October 27, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

308 PROVIDENCE, R. I., *October* 27, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held, at Henry W. Gardner's office, in the post office, at 2 o'clock p. m.

Present: Henry W. Gardner, representing, by proxy, four thousand twenty-two shares, held by Gorham P. Pomroy, assignee.

Adjourned to November 3, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *November* 3, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to November 10, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *November* 10, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to November 17, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *November* 17, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at Henry W. Gardner's office, in the post office, at 2 o'clock p. m.

Present: Henry W. Gardner, representing, by proxy, four thousand twenty-two shares held by Gorham P. Pomroy, assignee.

Adjourned to November 24, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

309 PROVIDENCE, R. I., *November* 24, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to December 1, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *December* 1, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 35 Weybosset street, at 2 o'clock p. m.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to December 3, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *December* 3, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 2 o'clock p. m., at the office of Henry W. Gardner, in the post office.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to December 4, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *December* 4, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 2 o'clock p. m., at 35 Weybosset street.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to December 8, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

310 PROVIDENCE, R. I., *December* 8, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 2 o'clock p. m., at 35 Weybosset street.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to December 10, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *December* 10, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 2 o'clock p. m., at Henry W. Gardner's office, in the post office.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to December 11, 1883, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *December* 11, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 2 o'clock p. m., at C. B. Farnsworth's office, in the Board of Trade building, the president in the chair.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares, and C. B. Farnsworth, administrator, representing three hundred and twenty-seven shares.

Voted, That this corporation will sell and dispose of its real estate, mills and machinery, stock and supplies in its said mills, situated in Coventry and Warwick, in county of Kent, at public auction, to the highest bidder, for cash, at a place in the city of Providence to be fixed by its president, on the tenth day of January, 1884, at 12 o'clock noon.

Adjourned to Thursday, December 13, 1883, at 11 o'clock a. m., at same place.

Attest: CHARLES B. GOULD, *Secretary.*

311 PROVIDENCE, R. I., *December* 13, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 11 o'clock a. m., at C. B. Farnsworth's office, in the Board of Trade building, the president in the chair.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares, and C. B. Farnsworth, administrator, representing three hundred twenty-seven shares.

Forms for advertising the sale of the mill estates belonging to this company were submitted by C. H. Parkhurst, and the details for the same were left to be managed by the president and C. A. Parkhurst.

Adjourned to Thursday, December 20, 1883, at 11 o'clock a. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *December* 20, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 11 o'clock a. m., at 35 Weybosset strest.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to Saturday, December 29, 1883, at 11 o'clock a. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *December* 29, 1883.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 11 o'clock a. m., at Henry W. Gardner's office, in the post office.

Present: Henry W. Gardner, representing, by proxy, four thousand twenty-two shares, held by Gorham P. Pomroy, assignee.

Adjourned to Saturday, January 5, 1884, at 11 o'clock a. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *January* 5, 1884.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 11 o'clock a. m., at 35 Weybosset street.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

312 Adjourned to Thursday, January 10, 1884, at 11 o'clock a. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *January* 10, 1884.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 11 o'clock a. m., at 35 Weybosset street.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to meet at 2 o'clock p. m. this day.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *January* 10, 1884.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 2 o'clock p. m., at 35 Weybosset street.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned to Saturday, January 19, 1884, at 2 o'clock p. m.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *January* 19, 1884.

An adjourned meeting of the stockholders of the Quidnick Company was held this day, at 2 o'clock p. m., at 35 Weybosset street.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Adjourned.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *March* 12, 1884.

A special meeting of the stockholders of the Quidnick Company was held this day, at 12 o'clock m., at the office of Stephen Harris, 74 Westminster street.

313 The meeting was held at the time and place named in a written call to the secretary signed by G. P. Pomroy, assignee, representing four thousand twenty-two shares, the following being a copy:

PROVIDENCE, *March* 7, 1884.

To C. B. Gould, secretary of the Quidnick Company.

DEAR SIR: You are hereby requested to call a special meeting of the Quidnick Company, to be held at the office of Stephen Harris, 74 Westminster street, in the city of Providence, on Wednesday, March 12, 1884, at twelve (12) o'clock m.

Respectfully,
(Signed) G. P. POMROY, *Assignee.*

The meeting was called to order by the secretary, the president being absent.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares, and C. B. Farnsworth, administrator, representing three hundred twenty-seven shares.

Adjourned to meet March 13, 1884, at the same time and place.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *March* 13, 1884.

An adjourned meeting of the stockholders of the Quidnick Company was held at the office of Stephen Harris, 74 Westminster street, this day, at 12 o'clock m.

The meeting was called to order by the president.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares, and Claude J. Farnsworth, representing, by proxy, three hundred twenty-seven shares, held by C. B. Farnsworth, administrator.

Voted, That the records of meeting September 1, 1883, and the records of all subsequent meetings be approved.

Voted, That the date of March 14, 1884, be inserted as the time of paying the dividend, as per following vote:

Voted, That a dividend of twenty dollars per share upon the outstanding shares of stock in the company is hereby declared payable

314 to the lawful stockholders on and after March 14, 1884, at the office of the treasurer, Charles B. Gould, No. 5 Washington street, in the city of Providence.

Voted, That whereas Zechariah Chafee, of Providence; Thomas C. Greene, of Providence, receiver of the Franklin Institution for Savings; Evan Randolph, of Philadelphia, Pennsylvania; Claudius B. Farnsworth, administrator, with the will annexed, upon the estate of Edwin Hoyt, in Rhode Island; Gorham P. Pomroy, of Providence, assignee of the A. & W. Sprague Manufacturing Com-

pany; Fanny Sprague, Mary Sprague, Amasa Sprague, and William Sprague and Appleton Sturges, of the city and State of New York, respectively claim to be owners of or to have certain claims upon the shares of the capital stock of this company and to be entitled to receive dividends thereon:

It is voted that a bill of interpleader be at once filed by this company in the supreme court against all said parties to determine the title of said parties, respectively, to said shares of said stock.

Voted, That the treasurer is hereby directed to deposit in the registry of the supreme court the amount of the dividend this day declared when the bill of interpleader is filed.

Adjourned.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *April* 9, 1884.

The annual meeting of the stockholders of the Quidnick Company was held this day, at 5 o'clock p. m., at 35 Weybosset street, notice of the same in accordance with by-laws having been given.

The meeting was called to order by the secretary, the president being absent.

Present: Gorham P. Pomroy, assignee, representing four thousand twenty-two shares.

Records of last meeting are read and approved. Stephen Harris was re-elected president and Charles B. Gould re-elected secretary and treasurer of this company.

Attest: CHARLES B. GOULD, *Secretary.*

PROVIDENCE, R. I., *June* 6, 1884.

A special meeting of the stockholders of the Quidnick Com-
315 pany was held this day, at 11 o'clock a. m., at the office of the company, 5 Washington street.

The meeting was called to order by the president.

Present: Henry W. Gardner, representing by proxy four thousand twenty-two shares held by Gorham P. Pomroy, assignee.

Records of last meeting are read and approved.

Voted, That a stock dividend of one hundred and twenty-five dollars per share on the outstanding shares of the capital stock of this company is hereby declared, payable in cash out of the capital of this company, in liquidation, on demand, at the office of the company, No. 5 Washington street, Providence, R. I.; and also a further dividend of 55¼ dollars per share on said stock, payable in mortgage notes of the A. & W. Sprague Manufacturing Company held by this company.

Voted, That the treasurer of this company is hereby directed to pay the stock dividend this day declared on 4,022 shares of the capital stock of this company held by Zechariah Chafee, trustee, in pledge, as shown by the stock transfer book of the company, to said Zechariah Chafee, trustee, payable on demand, at the office of the company.

Voted, That the president and treasurer of this company be, and they are hereby, authorized on behalf of the company to make, exe-

cute, and deliver to the Union Company of Providence a deed of the Quidnick Mills estate in Coventry, R. I., sold to said Union Company, at auction sale, on the tenth day of January, A. D. 1884, for the sum of $160,000, in accordance with the terms of said auction sale, and to affix the seal of the company thereto.

Adjourned.

Attest: CHARLES B. GOULD, *Secretary.*

EXHIBIT 18.

Referred to by Charles B. Gould in his foregoing deposition and by him furnished to me as part of his answer to interrogatory 8 of his said deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

316 Valuable cotton mills, known as the Quidnick property, at auction.

The Quidnick Company will sell at public auction, Thursday, January 10, 1884, at 12 o'clock noon, standard time, at the office of William H. Hall, auctioneer, No. 49 Weybosset street, in the city of Providence, R. I., its extensive and valuable manufacturing estates situated in Coventry and Warwick, in the State of Rhode Island, together with the machinery in the mills on said estate and its stock in process and other personal property in and about said mills.

The property will be sold in two parcels, as follows:

First. The Arctic Mills estate, so called, situated at Arctic village, in said Warwick, on both sides of the road-bed or right of way of the Hartford, Providence and Fishkill Railroad Company and on both sides of the south branch of the Pawtuxet river, containing in all about ninety-nine and one-half (99½) acres, together with the mill, boiler-house, tenement-houses, barns, and all other buildings and improvements thereon, and also the dams, water rights, rights of flowage, reservoir rights, including all rights belonging to said estate in the Quidnick Reservoir Company, and all other rights and privileges to said Arctic Mills belonging.

There are upon said estate a stone mill 312 feet in length and 68 feet wide and 4½ stories in height, with wing 95 feet by 50 feet, and a pump-house and boiler-house adjoining, built of stone. The mill contains 26,752 spindles. There are upon the estate forty-five wooden tenement-houses, containing eighty-seven tenements, and also two barns.

Second. The Quidnick Mills estate, so called, situated on both sides of said road-bed and on both sides of said south branch of said river, containing in all about one hundred and sixty-seven and a half (167½) acres, together with the mills, boiler-house, tenement-houses, store, boarding-house, superintendent's house, barns, and all other buildings thereon, together with all dams, water rights, rights of flowage, reservoir rights, including all rights in the Quidnick Reservoir Company appertaining or belonging to said estate, and

all other rights and privileges to said Quidnick Mills estate belonging.

There are upon said estate two stone mills, containing 31,360 spindles. Mill number 1 is 415 feet in length and 50 feet in width and contains four stories, with an attic. Mill number 2 is 222 feet in length and 68 feet in width and contains three stories and an attic.

317 There are also upon the estate fifty-four wooden tenement houses, with ninety-four tenements; a boarding-house with 41 rooms, a superintendent's house, a brick store, two boiler-houses and two waste-houses, two barns, and other buildings.

Terms of sale: Twenty per cent. of the purchase-money to be paid to the auctioneer at the time the property is struck off and the balance to be paid within thirty days after the sale, when the deed will be delivered and possession given.

The purchaser of each parcel of said estate will be required to take and pay for the stock in process and personal property at the appraisal already made, which will be announced at the time of sale.

For further information concerning the property application may be made to Stephen Harris, president, 74 Westminster street, Providence, or to the auctioneer.

By order of the Quidnick Company:

STEPHEN HARRIS, *President.*

Deposition of Herbert Almy.

HERBERT ALMY, of Providence, in the county of Providence, State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Quidnick Company and others, respondents in said suit, doth depose and say as follows:

Direct examination by CHARLES H. PARKHURST, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Herbert Almy; 24 years; Providence, R. I.; assistant clerk of the supreme court, Providence county, Rhode Island.

Int. 2. Have you in your possession and custody the original application made by the Quidnick Company in the suit in equity No. 1932, pending in the supreme court of the State of Rhode Island, to remove the injunction then existing upon said Quidnick Company, and the decree of said court issued thereon? If so, produce the same and annex a copy thereof to your deposition.

Ans. I have and will.

(The copies referred to are hereunto annexed, marked "Exhibit 19.")

Int. 3. Have you also the original papers in miscellaneous petitions pending in said court numbered 1877, 1878, 1879, 1880,
318 and 1881; and, if so, will you please annex copies of the decrees made by said court in all of said cases?

Ans. I have and will.

(The copies referred to are hereunto annexed, marked "Exhibits 20 to 24," inclusive.)

Int. 4. Will you state, Mr. Almy, whether certified copies of those several petitions numbered 1888, 1889, 1890, 1891, and 1892, together with the decrees thereon, are annexed to the respondents' answer?

Ans. Yes, they are.

HERBERT ALMY.

Subscribed by the said Herbert Almy in my presence this fifth day of February, A. D. 1885.

I. H. SOUTHWICK, JR., *Examiner.*

EXHIBIT 19.

(Pages 253 to 256, inclusive.)

Referred to by Herbert Almy in his answer to interrogatory 2 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

PROVIDENCE, *sc:*

Supreme Court. March Term, 1884.

Z. CHAFEE, Trustee, *et al.*
vs.
QUIDNICK COMPANY *et al.* } Equity, 1932.

The Quidnick Company respectfully shows that by permission of said court it has sold all its real estate and manufacturing property and has ceased to carry on the business of manufacturing, and has converted its real estate and other property into money, and has, under the decree of said court, paid a dividend out of its capital to its stockholders; that by the decree of said court, entered on the tenth (10th) day of September, 1881, it is now enjoined from contracting any debts and from disposing of its corporate property, and
319 that its personal estate is now in the hands of C. B. Farnsworth, custodian; that there is no occasion for the longer continuance of said injunction or for the said custodian to longer retain possession of said personal estate; wherefore they pray that said decree of September 10, 1881, may be modified so far that the injunction restraining said company from incurring debts or other obligations and from disposing of any part of its corporate estate or otherwise changing its condition may be dissolved, and that said custodian may be ordered to render and settle his accounts and pay over to said company the sum now in his hands; and, thereupon, that said custodian may be discharged from his said trust.

QUIDNICK COMPANY,
By C. H. PARKHURST.
ZECHARIAH CHAFEE,
Trustee, etc.,
By his solicitor, C. FRANK PARKHURST.

June 9, 1884.—Assented to:

JAMES TILLINGHAST.
CHAS. HART.

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

PROVIDENCE, *sc:*

Supreme Court. March Term, 1884.

Z. CHAFEE, Trustee, *et al.*
vs.
QUIDNICK COMPANY *et al.* } Equity, 1932.

Upon the foregoing petition of the Quidnick Company that the decree entered in the above-entitled cause, bearing date September 10, A. D. 1881, may be so far modified that the injunction restraining said company from incurring debts or other obligations and from disposing of any part of its corporate estate or otherwise changing its condition, and also praying that Claudius B. Farnsworth, the custodian of the personal estate of said company, may be ordered to render and settle his accounts as said custodian and pay to said company the sum now in his hands as said custodian, and thereupon be discharged from his trust—

By consent of said complainant it is ordered, adjudged, and decreed as follows:

320 First. That the said decree of September 10, 1881, be so far modified that the injunction by said decree granted restraining said Quidnick Company, its agents and servants, from contracting any debts or other obligations or entering into any engagement that in any manner can be or become liens upon the corporate property or estate or subject it to liability, and from disposing of any part of the corporate estate or property or otherwise changing its present condition, be, and the same is hereby, dissolved.

Second. That Claudius B. Farnsworth, Esq., the custodian of the personal estate of said company, appointed by said court by said decree, is hereby ordered to forthwith file and settle his accounts as said custodian, and upon such settlement thereof to pay to said Quidnick Company the sum in his hands upon such settlement, and to deliver to said company any personal estate other than money in his possession, and thereupon be discharged as said custodian.

Entered as the decree of the court this 11th day of June, 1884.

By order: CHARLES BLAKE, *Clerk.*

A true copy.
Attest: HERBERT ALMY,
Assistant Clerk.

J. H. STINESS, *J. S. C.*

EXHIBIT 20.

Referred to by Herbert Almy in his answer to interrogatory 3 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

"T."

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

NATIONAL BANK OF COMMERCE *et al.*
vs.
FANNY SPRAGUE, Assignee of William Sprague. } No. 1877.

Upon the foregoing petition, upon hearing, it is ordered, adjudged, and decreed that Fanny Sprague, assignee of William Sprague of 1,082 shares of the capital stock of the Quidnick Company,
321 within twenty (20) days from the date hereof render unto said court, under oath, an inventory of the effects, estates, and credits conveyed to her by said William Sprague by the assignment dated December 24, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of one hundred thousand dollars for the faithful performance of the trusts of said deed of assignment.

Entered as the decree of court, 75th day, M. T., 1883 (July 19, 1883).

By order: HERBERT ALMY,
Assistant Clerk.

A true copy.

Attest: [L. S.] HERBERT ALMY,
Assistant Clerk.

EXHIBIT 21.

Referred to by Herbert Almy in his answer to interrogatory 3 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

"U."

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

NATIONAL BANK OF COMMERCE *et al.*
vs.
FANNY SPRAGUE, Assignee of William Sprague. } No. 1878.

Upon the foregoing petition, upon hearing, it is ordered, adjudged, and decreed that Fanny Sprague, assignee of Amasa Sprague of 1,082 shares of the capital stock of the Quidnick Company, within twenty

(20) days from the date hereof, render unto said court, under oath, an inventory of the effects, estates, and credits conveyed to her by said Amasa Sprague by the assignment dated December 22, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of one hundred thousand dollars for the faithful performance of the trusts of said deed of assignment.

Entered as decree of court, 75th day, M. T., 1883 (July 19, 1883).
By order: HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest: [L. S.] HERBERT ALMY,
Assistant Clerk.

322 EXHIBIT 22.

Referred to by Herbert Almy in his answer to interrogatory 3 of his foregoing deposition.
Attest: I. H. SOUTHWICK, JR., *Examiner.*

"V."

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

NATIONAL BANK OF COMMERCE *et al.*
vs.
FANNY SPRAGUE, Assignee of A. & W. Sprague Manufacturing Company. } No. 1879.

Upon the foregoing petition, upon hearing, it is ordered, adjudged, and decreed that Fanny Sprague, assignee of the A. & W. Sprague Manufacturing Company of 455 shares of the capital stock of the Quidnick Company, within twenty (20) days from the date hereof render unto said court, under oath, an inventory of the effects, estates, and credits conveyed to her by said A. & W. Sprague Manufacturing Company by the assignment dated December 22, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of forty thousand dollars for the faithful performance of the trusts of said deed of assignment.

Entered as decree of court, 75th day, M. T., 1883 (July 19, 1883).
By order: HERBERT ALMY,
Assistant Clerk.

A true copy.
Attest: [L. S.] HERBERT ALMY,
Assistant Clerk.

EXHIBIT 23.

Referred to by Herbert Almy in his answer to interrogatory 3 of his foregoing deposition.
Attest: I. H. SOUTHWICK, JR., *Examiner.*

323 "W."

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

SECOND NATIONAL BANK *et als.*
vs.
FANNY SPRAGUE, Assignee of Mary Sprague. } No. 1880.

Upon the foregoing petition, upon hearing, it is ordered, adjudged, and decreed that Fanny Sprague, assignee of Mary Sprague of 601 shares of the capital stock of the Quidnick Company, within twenty (20) days from the date hereof render unto said court, under oath, an inventory of the effects, estates, and credits conveyed to her by said Mary Sprague by the assignment dated December 23, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of sixty thousand dollars for the faithful performance of the trusts of said deed of assignment.

Entered as decree of court, 75th day, M. T., 1883 (July 19, 1883).

By order: HERBERT ALMY,
Assistant Clerk.

A true copy.

Attest: [L. S.] HERBERT ALMY,
Assistant Clerk.

EXHIBIT 24.

Referred to by Herbert Almy in his answer to interrogatory 3 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

"X."

PROVIDENCE, *sc:*

Supreme Court. March Term, 1883.

GLOBE NATIONAL BANK *et als.*
vs.
MARY SPRAGUE, Assignee of Fanny Sprague. } No. 1881.

Upon the foregoing petition, upon hearing, it is ordered, adjudged, and decreed that Mary Sprague, assignee of Fanny Sprague of 802 shares of the capital stock of the Quidnick Company, within twenty (20) days from the date hereof render unto said court, under
324 oath, an inventory of the effects, estates, and credits conveyed to her by said Fanny Sprague by the assignment dated December 22, 1873, and also within said time give bond, with sureties to the satisfaction of said court, in the sum of eighty thousand dollars for the faithful performance of the trusts of said assignment.

Entered as decree of court, M. T., 75th day, 1883 (July 19).

By order: HERBERT ALMY,
Assistant Clerk.

A true copy.

Attest: [L. S.] HERBERT ALMY,
Assistant Clerk.

Deposition of Herbert Almy.

HERBERT ALMY, of Providence, in the county of Providence and State of Rhode Island, being recalled and testifying under sanction of his former oath and examined on the part of the said Quidnick Company and others, respondents in said suit, doth depose and say as follows:

Direct examination by CHARLES H. PARKHURST, Esq.:

Interrogatory 1. Have you in your custody the papers in suit in equity No. 2161, pending in the supreme court of the state of Rhode Island, in which Gorham P. Pomroy is complainant and Evan Randolp, The Quidnick Company, and others are respondents? If so, will you please produce the same and annex to your answer copies of the petition in said cause of said Pomroy and The Quidnick Company against said Evan Randolph and J. Cooke Longstreth calling upon said Randolph and Longstreth to produce certain books and papers of said Quidnick Company therein mentioned, and also annex to your answer the orders of the court upon said petition and the answer of Evan Randolph thereto and the final order of the court relating to the disposition of said books and papers?

Answer. I have and will.

(The copies referred to are hereunto annexed, marked "Exhibit 25.")

HERBERT ALMY.

Subscribed by the said Herbert Almy in my presence this eleventh day of February, A. D. 1885.

ISAAC H. SOUTHWICK, JR., *Examiner.*

325 EXHIBIT 25.

(Pages 278 to 288, inclusive.)

Referred to by Herbert Almy in his answer to interrogatory 1 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

PROVIDENCE, *sc:*

Supreme Court, August, 1883.

GORHAM P. POMROY, Assignee,
vs.
WILLIAM SPRAGUE and Others. } Equity, No. 2161.

I, Gorham P. Pomroy, of Providence, in said county, on oath declare and say that I am the complainant in the above-entitled cause; that I am informed and verily believe that Evan Randolph, one of the respondents in said suit, residing in Philadelphia, in the State of Pennsylvania, claiming to be president of The Quidnick Com-

pany, also a respondent in said cause, and J. Cooke Longstreth, of said Philadelphia, claiming to be secretary of said Quidnick Company, have in their possession the record books and stock transfer books and the stock certificate books of said Quidnick Company, and have illegally removed said books into said State of Pennsylvania or elsewhere without this State; and I further say that I am the owner of 4,022 shares of the capital stock of said Quidnick Company, as assignee, as set forth in the bill of complaint in said cause, being a majority of all the shares of the capital stock of said company and all of said shares outstanding except 327 shares now held by Claudius B. Farnsworth, administrator upon the estate of the late Edwin Hoyt, in Rhode Island; that the complainant, as holder of a majority of the shares of said capital stock, is entitled (for the protection of his rights as such stockholder) to have said books brought into this State and placed in the custody of said Quidnick Company and of its secretary and treasurer, Charles B. Gould, or in the custody and control of this honorable court; that the possession of said
326 books by said Quidnick Company and its secretary and treasurer or their production here in court are [is] now absolutely essential to the complainant in the prosecution of said cause and the preparation for the trial thereof, for the following reasons:

That the said Evan Randolph claims title to the said 4,022 shares of said stock by reason of certain transfers thereof made to him by Fanny Sprague, as assignee of Amasa Sprague, William Sprague, Mary Sprague, and the A. & W. Sprague Manufacturing Company of 3,220 shares thereof, and by Mary Sprague, as assignee of Fanny Sprague of 802 shares thereof; that the complainant's title to said stock is fully set forth in his bill of complaint, to which reference is hereby made, he having been appointed by this court assignee in place of Fanny Sprague, assignee, and Mary Sprague, assignee, who were removed by this court from their said trusts as such assignees by order of this court for their neglect and refusal to comply with its orders and decrees.

That the complainant is informed and believes that said pretended transfers of said stock to said Evan Randolph by said Fanny Sprague, assignee, and said Mary Sprague, assignee, appears upon the stock transfer book of said Quidnick Company, but the date thereof is unknown to him, but he is informed and believes that the same were made, if at all, at some time between the second (2nd) and the sixth (6th) days of August, 1883, while the proceedings set forth in said bill of complaint, which resulted in the removal of said Fanny Sprague, assignee, and Mary Sprague, assignee, and the appointment of the complainant in their places, were pending in this court, and in violation and contempt of the orders of said court in said proceedings, but he is unable to prove the same without the inspection of said books.

Wherefore the complainant prays that the said Evan Randolph and J. Cooke Longstreth may, under their respective oaths, answer as to what documents or books they or either of them have relating to the matters in dispute between said parties or what they or either of them know as to the custody thereof, and if in the custody of

them or either of them, and whether they or either of them object to the production thereof, and the grounds of such objection, and that said books and documents may be produced here in court for the inspection of the complainant, and that he may be permitted to take copies thereof, and that the same may be retained in the custody of the court, and that the court will make such further order in the premises as shall seem just.

327 And The Quidnick Company, one of the respondents in the above-entitled cause, hereby joins in the above petition and the prayer thereof.

GORHAM P. POMROY, *Assignee.*
QUIDNICK COMPANY,
STEPHEN HARRIS, *President.*
CHARLES B. GOULD,
Secretary and Treasurer.

Subscribed and sworn this 14th day of September, A. D. 1883, by Gorham P. Pomroy.

Before me—

RATHBONE GARDNER,
Notary Public.

PROVIDENCE, *sc:*

Supreme Court, September 21, 1883.

GORHAM P. POMROY, Assignee, *vs.* WILLIAM SPRAGUE and Others. } Equity, 2161.

Order on Motion for Production of Books.

Upon the application, in writing and under oath, of the complainant, setting forth that Evan Randolph and J. Cooke Longstreth, defendants in the above-entitled cause, have in their possession and control, in the city of Philadelphia, in the State of Pennsylvania, or elsewhere without this State, the record books, stock transfer books, and the stock certificate books of the Quidnick Company, and the production thereof is essential and necessary to the said complainant in the prosecution of this suit—

It is ordered that the said Evan Randolph and the said J. Cooke Longstreth, respectively, make answer, under oath, to said court on or before the 28th day of September, A. D. 1883, as to what books or documents specified above they or either of them have relating to the matters in dispute between the parties to said suit or what they or either of them know as to the custody of such books and documents, and if in possession or control of them or either of them whether they or either of them object to the production

328 thereof, and the grounds of such objection; and it is further ordered that said motion be set down for hearing on the 29th day of September, A. D. 1883, at 10 o'clock in the forenoon, at the court-house, in Providence.

And it appearing to the court that said Evan Randolph and J. Cooke Longstreth reside in said city of Philadelphia, it is further ordered that notice of the pendency of said motion and of this order be given by the clerk to said Evan Randolph and J. Cooke Longstreth by publishing this order twice in The Times, a newspaper published in said Philadelphia, the last publication to be on or before September 25, 1883, and by serving a copy of this order on Elisha C. Mowry or Richard B. Comstock, of the city of Providence, the solicitors of record in this State of said Evan Randolph, on or before September 24, 1883.

Entered as the decree of court September 21, A. D. 1883.

By order: CHARLES BLAKE, *Clerk.*

PROVIDENCE, *sc:*

PROVIDENCE, *September* 22, 1883.

I certify that I have this day served a copy of the foregoing order on Elisha C. Mowry, above named, by leaving the same in his hands and possession.

CHARLES BLAKE, *Clerk.*

Fee, 75c.

PROVIDENCE, *September* 29, 1883.

I certify that I have published the above order twice in The Times, a newspaper published in Philadelphia, to wit, on the 24th day of September, 1883, and on the 25th day of September, 1883, as appears by copies of said The Times herewith on file.

CLARLES BLAKE, *Clerk.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

Supreme Court, September 29, 1883.

GORHAM P. POMROY, Assignee, *vs.* WILLIAM SPRAGUE and Others. } Equity, 2161.

Order.

Upon the petition of the complainant in the above-entitled cause for the production of the books and papers of the Quidnick Company—

329 The above petition came on to be heard, and it appearing to the court that notice has been given to Evan Randolph and J. Cooke Longstreth, respondents named in said petition, in compliance with the order of the court therein, and it further appearing to the court that the said Evan Randolph and J. Cooke Longstreth have neglected and refused to make answer under oath, as required by the order of said court:

It is now, upon motion of the complainant, ordered and decreed that the said Evan Randolph and the said J. Cooke Longstreth, on or before the 6th day of October, A. D. 1883, deliver to the clerk of

this court the record books, stock transfer books, and stock certificate book and all other books or papers belonging to said Quidnick Company in their posssession and in the possession of either of them; and it is further ordered that the clerk of this court send by mail, post-paid, a certified copy of this order addressed to the said Evan Randolph and J. Cooke Longstreth, to each of them, at Philadelphia, in the State of Pennsylvania.

Entered as the decree of court this 29th day of September, A. D. 1883.

By order: HERBERT ALMY,
Assistant Clerk.

Enter.
J. H. STINESS, *J. S. C.*

PROVIDENCE, *sc:*

PROVIDENCE, *October 1st*, 1883.

I certify that I have this day sent by mail, post-paid, a certified copy of this order addressed to the said Evan Randolph and J. Cooke Longstreth, to each of them, at Philadelphia, in the State of Pennsylvania.

Fee, 58 cents.

CHARLES BLAKE, *Clerk.*

PHILADELPHIA, *4th Mo.*, 1883.

GENTLEMEN: Counsel have advised me not to recognize the jurisdiction of your honorable court in proceedings in which an order purports to have been made on me for "production of books," but it is due to myself to say that I have never seen the books nor had any possession or control of them; but on inquiry (since receipt of your order) learned that they have been returned to your State, to the party who sent them out of it.

It is perhaps further due to myself, as a law-abiding citizen, to say that neither I nor my local counsel were consulted, advised, or approved of their removal from the State, as, independent of
330 all other considerations, we could not see that their custody had anything to do with my suit in the United States court to establish my title to the stock in the Quidnick Company.

Very respectfully yours, EVAN RANDOLPH.

To the honorable the judges of the supreme court of Rhode Island, Providence, R. I.

Filed October 5, 1883.

C. BLAKE, *Clerk.*

PROVIDENCE, *sc:*

Supreme Court. October Term, 1883.

G. P. POMROY, Assignee, *vs.* EVAN RANDOLPH *et al.* } Equity, 2161.

Upon the petition of The Quidnick Company, one of the respondents in the above-entitled case, for the delivery to said company — the record books, the stock transfer book, and the stock certificate book of said company, now in the hands of the clerk of said court, it appearing that notice of the pendency of said petition — pursuant to the order of said court, after hearing the counsel for the petitioner and the affidavit of Clarence H. Guild, former secretary of said company, no person appearing to object thereto, it is ordered, adjudged, and decreed that the clerk of this court deliver to said Quidnick Company, upon the receipt of its solicitor of record in said cause, the record books, the stock certificate book, and the stock-transfer book of said company, now in the custody of said clerk.

Entered as the decree of court January 14, 1884.

By order: CHARLES BLAKE, *Clerk.*

PROVIDENCE, *January* 14, 1884.

Received of Charles Blake, clerk of the supreme court, the record books, stock transfer book, and the stock certificate book of the Quidnick Company named in the above order.

QUIDNICK COMPANY,
By its solicitor, CHARLES H. PARKHURST.

14th January, 1884, entered.
G. M. CARPENTER, *J.*

331 *Deposition of Stephen Harris.*

STEPHEN HARRIS, of Warwick, in the county of Kent and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Quidnick Company and others, respondents in said suit, doth depose and say as follows:

Direct examination by CHARLES H. PARKHURST, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Stephen Harris; 69 years old; residence, Warwick, R. I.; occupation, manufacturer.

Int. 2. What position or office do you hold in the Quidnick Company?

Ans. President.

Int. 3. What arrangement or agreement, if any, did you make or enter into with Gorham P. Pomroy, Claudius B. Farnsworth, Charles B. Gould, and the Union Company, or any other person, to dispose

of the property of the Quidnick Company to the Union Company for the purpose of depreciating the value of the stock of the complainant, Evan Randolph, in said Quidnick Company, or prevent his selling the same for anything like its value, or to deprive him of any dividends on said stock, or to deprive him of his rights as a stockholder in said Quidnick Company, or to divert the assets and property of said Quidnick Company from their legitimate use to an unlawful purpose? State fully what arrangements, if any, that you made with either of said persons.

Ans. No.

Cross-examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. Who elected you president of the Quidnick Company?

Answer. The stockholders. I was not at the meeting when I was elected.

Int. 2. Who do you mean by the stockholders?

Ans. I do not know that I can tell you the names; by those people, as I suppose, who had a vote on the stock and had the power to elect.

Int. 3. Is it not the fact that you were elected to the office of president of the Quidnick Company by the vote of Gorham P. Pomroy, assignee in place and stead of Mary and Fanny Sprague; of
332 Claudius B. Farnsworth, claiming the right to vote on 327 shares of the Quidnick Company's stock as administrator on the estate of Edwin Hoyt, deceased, and by some person claiming to represent certain other shares of said Quidnick Company stock which, it is claimed, was bought in by said Quidnick Company?

Ans. I should have to refer to the records of the Quidnick Company. I was not present at that meeting and I have no recollection of what the proceedings at that meeting were. I do not know the men who were at the meeting and who voted. I received a notice of my election.

Int. 4. Did you or not know at the time you were notified of your election that Evan Randolph and J. Cooke Longstreth were *bona fide* officers of the Quidnick Company or that they claimed to be such?

Ans. All I knew was the rumors on the street.

Int. 5. What were those rumors?

Ans. Well, it was said that Mr. Randolph was going to make a claim before the court or in some other way for some interest which he had in the Quidnick Company.

Int. 6. When were you elected president of the Quidnick Company, or when were you notified of your election as such president?

Ans. I think I am right in saying that it was the first day of September, 1883. If the records show different, then I am mistaken, but that is my impression. I would prefer that the records should be consulted.

Int. 7. Did you not know that several months prior to that date Evan Randolph had filed a bill in equity to establish his title to 4,022 shares of the Quidnick stock, and that said bill was pending

in the circuit court of the United States for the district of Rhode Island, and that he and J. Cooke Longstreth claimed to be the legally elected officers of said Quidnick Company, and that the property, real and personal, of said Quidnick Company was at that time in the hands and possession of William Sprague as the agent of said officers?

Ans. No; I did not know it at that time. I was not obliged to know all these things to be elected president.

Int. 8. Why was the property of the Quidnick Company sold after you became, as you claim, president of said company?

Ans. It was sold by a vote of the company and, as I understood, by permission of the court. That was my understanding.

Int. 9. Do you know who voted to sell?

Ans. I think that the records will show that.

Int. 10. Was the Quidnick Company insolvent at that time?

333 Ans. Really, I think that is a question which the treasurer should answer. I was not treasurer; I was president.

Int. 11. Do you mean to say that you know of no reason other than that before assigned why the property of the Quidnick Company was sold at that time?

Ans. I know of no other reason.

Int. 12. Did you not know that at that time there were various claims to the stock of the Quidnick Company and suits in equity pending concerning said stock which were calculated to cloud the title to the property of said Quidnick Company, which must necessarily tend to depreciate the market value of the property of said Quidnick Company, and in view of this litigation the property could not then be sold to advantage?

Ans. I was merely acting as president of the Quidnick Company. I was carrying out as nearly as I could the purposes of the corporation. I had no idea that I was bound to comprehend the legal questions involved. My opinion would have no value. In other words, the legal questions of the corporation were submitted to their counsel.

Int. 13. What was done with the proceeds realized from the sale of the property of the Quidnick Company?

Ans. I refer you to their books—the treasurer.

Int. 14. Do you know, of your own knowledge, that Horatio N. Waterman, a creditor of the A. & W. Sprague Manufacturing Company, and, through whom the complainant claims title to certain shares of stock in said Quidnick Company, was present at the general meeting of the creditors of said A. & W. Sprague Manufacturing Company held in the city of Providence in the month of November, 1873, when the trust mortgage marked "Complainant's Exhibit A," and the scheme of payment, settlement, and extension proposed to be carried out thereunder, were presented to and approved by said creditors, and that said Waterman took part in said meeting of said creditors and assented thereto?

Ans. I was not a creditor of the A. & W. Sprague Manufacturing Company and never attended any of their meetings.

Int. 15. At the time of the sale of the Quidnick Company's prop-

erty, did you consider that in the then state of the market manufacturing property could be then sold to advantage?

Ans. To better advantage than it could be sold at any time
334 since. At no time could it have been sold to better advantage. That is my opinion.

STEPHEN HARRIS.

Subscribed by the said Stephen Harris in my presence this sixth day of February, A. D. 1885.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Deposition of Henry W. Gardner.

HENRY W. GARDNER, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Quidnick Company and others, respondents in said suit, doth depose and say as follows:

Direct examination by CHARLES H. PARKHURST, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Henry W. Gardner; 63 years old; Providence, R. I.; postmaster of the city of Providence.

Int. 2. What position do you occupy in the Union Company of Providence, Rhode Island, and how long have you occupied it?

Ans. I am president of the Union Company and have occupied that position since its organization, which, according to my recollection, was about three years ago.

Int. 3. What combination or agreement, if any, was made by the said Union Company, or by you as its president, or by any other officer of the Union Company, with the respondents, Gorham P. Pomroy, C. B. Farnsworth, Stephen Harris, and Charles B. Gould, or either of them, or with Benjamin B. and Robert Knight, to sell the real estate and manufacturing property of the Quidnick Company to the said Union Company for the purpose of depreciating the value of the stock of Evan Randolph, the complainant, in said Quidnick Company, or to prevent said Randolph from selling the same for anything like its true value, or to deprive him of his rights and privileges as a stockholder in said Quidnick Company, or to divert the assets and property of said Quidnick Company from their legitimate use to an unlawful purpose?

Ans. None whatever.

335 Int. 4. Are you familiar with the value of manufacturing property in the State of Rhode Island?

Ans. I am, to some extent.

Int. 5. Are you an owner of manufacturing property in the State of Rhode Island and in the town of Coventry?

Ans. I am.

Int. 6. Were you present at the sale of the manufacturing property of the Quidnick Company, at the office of William H. Hall, in

the city of Providence, January tenth, 1884; if so, were you a bidder at said sale? And state whether or not there were other bids than your own at such sale, and whether or not the bidding was active, and about how many people were present at said sale.

Ans. I was present at the sale of the Quidnick property, at the office of William H. Hall and I suppose at the time mentioned. I was a bidder and a purchaser for the Union Company. The property was sold in two parcels. One was started at $50,000 and run up to $100,000, at which price it was sold. The other parcel was started at $100,000 and run up to $160,000, at which price it was sold. There were other bids than mine for both parcels. The bidding was active. I should think there were from fifty to seventy-five people present.

Int. 7. Please state whether, in your judgment, said property at said sale brought its fair market value?

Ans. I think it did.

Int. 8. Did the Union Company pay to the Quidnick Company the purchase-money for said property bid at said sale?

Ans. They did.

Int. 9. Do you remember whether William H. Baker, the counsel for the complainant, Evan Randolph, was present at said sale?

Ans. I do not remember.

Int. 10. Was any protest made at said sale in your hearing by Evan Randolph, or any one claiming to represent him, against said sale?

Ans. I don't recollect that any were made.

Cross-examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. What class of manufacturing property in Rhode Island are you familiar with the value of?

Answer. Well, to some extent, I am familiar with the cotton manufacturing property.

336 Int. 2. Are you engaged in the manufacture of cotton goods yourself; and, if yea, how long have you been so engaged?

Ans. I am president and the principal stockholder of the Coventry Company and have been so engaged for several years. I cannot state the exact time.

Int. 3. Are you a stockholder in the Union Company; and, if yea, how long have you been such and to what extent?

Ans. I am a stockholder; have been such since its organization, and to the extent of a little over $50,000 of its capital. Its capital is not all paid in.

Int. 4. At the time you purchased property of the Quidnick Company, as you have stated, on behalf of the Union Company, did you not know that a bill in equity was pending in the United States circuit court for the district of Rhode Island, brought by Evan Randolph, the complainant, to establish his title to 4,022 shares of the Quidnick Company stock?

Ans. I do not now recollect whether I knew it at that time or not.

Int. 5. Did you not at that time know there were suits pending touching the ownership of stock in the Quidnick Company, which

must tend to throw a cloud upon the title to the property of the Quidnick Company, and that they would depreciate the market value of said property, so that the same could not be sold at that time to advantage?

Ans. I did know that at or before that time there were some suits relating to the title of Evan Randolph to some stock in the company pending in the State court. I did not suppose that they threw any cloud upon the title of the property or had any effect on its sale.

Int. 6. Did you consult counsel upon that point; and, if yea, whom?

Ans. I never thought it necessary to consult counsel. The whole thing was such a palpable fraud I did not think it worth while; I did not think it of any consequence.

Int. 7. What do you mean by the expression "the whole thing was a palpable fraud?"

Ans. I meant that the shares of stock were transferred by William Sprague, the president of the company, as attorney for the assignees of this stock, to Evan Randolph without any consideration.

Int. 8. When did the fact of this transfer come to your knowledge?

Ans. During one of the hearings in the State court it was sworn to by the counsel of Evan Randolph.

Int. 9. Was this or not prior to the tenth day of January, 1884, the day of the sale of the Quidnick property?

337 Ans. It was.

Int. 10. Did you or not take the trouble to familiarize yourself with the character and details of the suits pending in the State court which you have referred to, touching the ownership of the stock of the Quidnick Company, prior to the purchase by you of the property of said Quidnick Company?

Ans. I was familiar with the suits.

Int. 11. For what purpose did you understand that the property of the Quidnick Company was to be sold?

Ans. I understood it was to be sold for the purpose of paying the Sprague debts.

Int. 12. Did you know prior to the sale who voted to sell said property or under what circumstances said property was authorized to be sold?

Ans. If I did know who voted I cannot at this time recollect. It is possible that I did know at the time. I don't recollect any particular circumstances. I understood that the object of the sale of the property was that it might be applied toward the payment of the Sprague debts.

Int. 13. Do you not now recall the fact that the property of the Quidnick Company was authorized to be sold by Gorham P. Pomroy, who voted upon 4,022 shares of the stock of said company as assignee in place of Mary and Fanny Sprague, removed, and by Claudius B. Farnsworth, who voted upon 327 shares of the stock of said Quidnick Company, claiming to act as administrator upon the estate of Edwin Hoyt, deceased?

Ans. I have no personal knowledge regarding it, as I was never

present when any such vote was taken. I have, however, no doubt that such was the fact, as I understand that they represented the whole stock of the company.

Int. 14. Did you take the trouble, prior to the purchase by you for the Union Company of the property of the Quidnick Company, to ascertain whether the persons who voted to sell the property of the Quidnick Company were legally authorized so to do or whether there was any legal authority for the sale of said property at that time?

Ans. I was advised by the counsel of the Union Company, Charles H. Parkhurst, that the sale was a perfectly proper, valid, and legal one, both before and after the sale.

Int. 15. Did you or not, at the time of the purchase of the Quidnick Company property as aforesaid, know that Evan Ran-
338 dolph claimed to be a stockholder in said Quidnick Company and the owner of 4,022 shares of stock therein, and that said Randolph and J. Cooke Longstreth claimed to be the legally elected officers of said company?

Ans. I knew that a certificate of 4,022 shares of stock was issued by William Sprague, president of the Quidnick Company, to Evan Randolph, which the supreme court of this State decided to be a fraud and the certificate invalid. I did hear the counsel of Evan Randolph swear that Evan Randolph and J. Cooke Longstreth were elected president and secretary of the company. I do not recollect to have heard that they ever attempted to exercise any authority over the affairs of the Quidnick Company.

Int. 16. Was this knowledge you speak of acquired by you prior to the purchase by you of the property of the Quidnick Company?

Ans. It was.

Int. 17. At the time you purchased the property of the Quidnick Company, do you consider that the market value of manufacturing property of that character was such that the sale of the property of the Quidnick Company could be made with advantage?

Ans. I think it was advantageous for all persons interested in that property that it should be sold at that time. At any time that manufacturing property was paying a large profit it probably would have sold for a larger price. As manufacturing business is now I think the property sold for more than it would sell for at this time. I don't think it would have brought a higher price if it had been sold at public auction at any time since that time. At the time of the sale the property was not in operation.

Int. 18. How long had the property been lying idle?

Ans. I can't fix the time, but I should say probably six months.

HENRY W. GARDNER.

Subscribed by the said Henry W. Gardner in my presence this eleventh day of February, A. D. 1885.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Deposition of Claudius B. Farnsworth.

CLAUDIUS B. FARNSWORTH, of Pawtucket, in the county of Providence and State of Rhode Island, being sworn to testify the
339 truth, the whole truth, and nothing but the truth, and examined on the part of the said Quidnick Company and others, respondents in said suit, doth depose and say as follows:

Direct examination by CHARLES H. PARKHURST, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Claudius B. Farnsworth; 70 years old; residence, Pawtucket, R. I.; attorney-at-law. I am one of the defendants in this case.

Int. 2. What agreement, arrangement, or combination, if any, did you make with the respondents, Gorham P. Pomroy, Charles B. Gould, Stephen Harris, and the Union Company, or any of them, to dispose of the manufacturing property of the Quidnick Company to the Union Company or to any other person for the purpose of depreciating the value of the capital stock in the Quidnick Company owned or claimed to be owned by Evan Randolph, the complainant, or to prevent his selling the same for anything like its true value, or to prevent him from receiving dividends on said stock, or to deprive him of his rights and privileges as a stockholder in said company, or to divert the assets and property of said Quidnick Company from their legitimate use to an unlawful purpose?

Ans. None whatever.

Int. 3. Were you at any time, and, if so, from what date to what date, in the custody and control of the property of the Quidnick Company?

Ans. I was in partial control of the property of the Quidnick Company from the third day of September to the tenth day of September, 1881. I was in general charge and had the custody of the property of the Quidnick Company from September tenth, 1881, to its sale, in January, 1884, under orders of the supreme court.

Int. 4. Have you been engaged practically as a manufacturer of cotton goods; and, if so, for about what length of time?

Ans. I have not been engaged in the business of manufacturing cotton goods. I was for about twenty-five years the treasurer and had the general management of the business of a calico-printing establishment in which very large quantities of cotton goods were used. It was the Dunnell Manufacturing Company, at Pawtucket.

Int. 5. Are you familiar with the value of cotton-manufacturing property in Rhode Island?

Ans. Well, only in a general way. I have not had charge
340 of such property except in case of the Quidnick Mills. I was in charge of them about two years and a half. I necessarily became during that time somewhat familiar with that kind of property.

Int. 6. During the time that you had the general custody of the property of the Quidnick Company by whom were the mills of the company operated, so far as you know?

Ans. For about six months after I was put in custody of them they were operated by Benjamin G. Chace. The rest of the time, until about December tenth, 1883, they were operated by William Sprague. I think I have the month right; I am not positive about it.

Int. 7. At the time of the sale of the mills of the Quidnick Company, in January, 1884, were the mills running?

Ans. They were not; they had been shut down some time—I should think about six weeks.

Int. 8. During the time that you were in the control and had custody of the property of the Quidnick Company who paid the taxes, insurance, and other expenses chargeable to the Quidnick Company's estate?

Ans. The taxes and insurance were paid from the funds of the Quidnick Company in my hands. The expenses for the care of the estate were paid from the same property. The repairs upon the mills and other buildings were paid by those who run the mills, such as were done.

Int. 9. Was any rental for the Quidnick Company mills and property paid to you by any person during the time that you held the custody of the property?

Ans. None whatever. I was not authorized by the court, under whose orders I acted, to collect any.

Cross-examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. What do you mean by the statement that you were in the partial control of the property of the Quidnick Company from September 3d, 1881, to September 10th, 1881?

Answer. The order of the supreme court made September 3d, 1881, gave me limited control over the property as compared with the one made September 10th, 1881. The difference will be found by inspecting the two orders of the supreme court of the dates named. My whole authority during the entire period over the property is expressed in those orders, except that several special orders were made subsequently for specific purposes respect-
341 ing the property and authorizing me to do certain specific things with the property or with parts of the property.

Int. 2. What action did you take after the entry of the order of September 10th, 1881, to get possession of the real estate of the Quidnick Company?

Ans. I was authorized by that order to permit such persons as the Quidnick Company might authorize to run the mills and use the property connected therewith, which was the whole real estate, and in accordance with such authority and by an understanding and verbal agreement with Mr. Chace aforenamed I permitted him to continue in possession of the mills and real estate, as he showed me to my satisfaction that he was authorized by the Quidnick Company to run them. Upon his giving up in March, 1882, it was shown to

me that the Quidnick Company had authorized William Sprague to run them, and I permitted him to do so and to have possession of the real estate.

Int. 3. Who were the officers of said Quidnick Company, and who composed said company at that time?

Ans. William Sprague claimed to be president of the company at that time. Benjamin G. Chace claimed to be treasurer during a large part of the time—I do not remember how long. I have no personal knowledge of who were stockholders.

Int. 4. Did or not William Sprague deliver the real estate of said Quidnick Company, as well as the personal property thereof, into your possession and control on the fourth day of December, 1883, in pursuance of a decree made by the supreme court of Rhode Island, entered on the third day of December, 1883, on your application to said supreme court for a writ of assistance to obtain the possession and control of the personal property of said Quidnick Company?

Ans. I made an application to the supreme court to obtain a writ of assistance for the possession of the personal property of the Quidnick Company from William Sprague. An order was made by the court that the writ should issue unless the property was delivered to me on or before a day named in the order. The property was delivered to me, so that the writ was not issued. I am not certain about the day, but it was early in December, 1883. I received possession of the real estate at the same time. The order only specified the personal property.

Int. 5. Who delivered to you the possession of the real estate of the Quidnick Company?

Ans. No one delivered to me possession of the real estate.
342 When the personal property was given up to me by William Sprague he left the possession and I took it. He did not deliver it to me. As my original order included the real estate as well as the personal, and their use necessarily went together, I took possession of the real estate in order to take care of it under the court's order of September 10th, 1881.

Int. 6. Was not this the first time you had been in actual possession and control of the real estate of the Quidnick Company under any order of the court whatsoever?

Ans. When the order was first made I directly arranged with Mr. Chace for the use and occupation of the mill property, which includes all the real estate under which they occupied by my permission all of said property—first Mr. Chace and afterward William Sprague—until it was delivered to me by Mr. Sprague, as I have stated, in December, 1883. Their occupation was under my permission made by authority of the court's order.

Int. 7. You have stated that neither Mr. Chace nor Governor Sprague paid you any rent for the use and occupation of the said premises, and yet you considered yourself, as custodian aforesaid, in possession and control of said premises?

Ans. I considered myself to be in possession and control of the mills and mill property of the Quidnick Company under the order of the court and the arrangement with Mr. Chase and Mr. Sprague

made by authority of it, and I understood the order to authorize me to allow them to occupy said property by the consent of the Quidnick Company without paying rent to me for it. I paid the taxes and insurance by order of the court, special orders being made for the purpose.

Int. 8. Why did you apply to the supreme court for the possession and control of the personal property of said Quidnick Company on the twenty-seventh day of October, 1883?

Ans. I was informed that William Sprague had ceased to be running the mills of the Quidnick Company by the authority and consent of the Quidnick Company. On receiving that information I made a demand upon him to deliver the property to me, which he refused; and I thereupon made an application to the court for assistance in getting possession of it, so that I might comply with the order made September 10th, 1881.

Int. 9. Did Governor Sprague state the ground of his refusing to deliver said property to you; and, if yea, what was it?

343 (Objected to as not in cross-examination and as entirely irrelevant to any issue in the case.)

Ans. He gave no reason, that I remember. If he did I have forgotten it.

Int. 10. Did you or not know at that time that the complainant in this cause claimed to be the holder and owner of 4,022 shares of the capital stock of said Quidnick Company, and also the president of said Quidnick Company, and that said Sprague held the possession and control of the property of said Quidnick Company for and in behalf of the *bona fide* officers of said Quidnick Company?

(Objected to as not in cross-examination.)

Ans. I had heard that Evan Randolph claimed the stock which had formerly been held by the Spragues, but I had no definite knowledge of the matter. Governor Sprague, so far as I remember, did not say anything to me about it. If he did so it has escaped my recollection.

Int. 11. Did you or not know at that time that a bill in equity was then pending in the circuit court of the United States for the district of Rhode Island, filed by the complainant, Evan Randolph, to establish his title to 4,022 shares of the capital stock of said Quidnick Company?

(Objected to as not in cross-examination.)

Ans. I had heard that there was a bill for some such purpose, which I do not remember at that time to have examined into.

Int. 12. To whom did you deliver the property of the Quidnick Company after you took possession of it, and under whose authority did you deliver the same?

Ans. Under the authority of the supreme court of Rhode Island I delivered the real estate to the parties to whom the Quidnick Company sold the property. The machinery of the mills went with the

real estate. I delivered it to the agents of the Union Company, who were the purchasers.

Int. 13. Did you have any other authority from the supreme court to so deliver said property than the orders you have heretofore referred to?

Ans. Yes; there was one or more orders made by the supreme court after I took possession, in December, 1883, under which the property was sold and under which I delivered possssion to the purchasers. I do not now remember the dates of them. One or more of these orders modified the order of September 10th, 1883.

344 Int. 14. Who represented the Quidnick Company at the time the sale of said property was made to the Union Company?

Ans. The sale was made at auction by William H. Hall. Stephen Harris, as president of the company, I understood, directed the sale, and I think was present. Charles B. Gould acted as secretary and treasurer, and I think he was also present.

Int. 15. Who elected Stephen Harris as president and Charles B. Gould as secretary of said Quidnick Company?

(Objected to as not in cross-examination.)

Ans. The meeting of the stockholders of the Quidnick Company held some time in 1883. Gorham P. Pomroy, who had been appointed by the supreme court to be assignee of the stock of the Quidnick Company held in trust by Mary and Fanny Sprague, as their successor, was present at the meeting. I was there, representing 327 shares of stock belonging to me as administrator of the estate of Edwin Hoyt, deceased. Stephen Harris and Charles B. Gould were chosen to the offices named. As I held but a minority of the stock and all the rest was held by Mr. Pomroy, I could exercise no controlling influence in the matter.

Int. 16. Was not this meeting last referred to held in the city of Providence on the first day of September, 1883?

(Objected to as not in cross-examination.)

Ans. It was held in the city of Providence, but the date I have forgotten. It was some time in 1883.

Int. 17. By whom were you appointed as administrator on the estate of Edwin Hoyt, deceased?

(Objected to as not in cross-examination.

Ans. By the municipal court, in the city of Providence, in November, 1882.

Int. 18. Where did Edwin Hoyt live and where did he die?

(Objected to as not cross-examination and on the ground of irrelevancy.)

Ans. In the city and State of New York.

Int. 19. Was he ever, to your knowledge, a citizen or resident of Rhode Island?

(Objected to as not in cross-examination and as irrelevant.)

Ans. Not that I know of.

Int. 20. After you were appointed administrator on said Hoyt's estate did the certificates of stock which he held in the said Quidnick Company come into your hands and possession as administrator?

345 (Objected to as not in cross-examination and as irrelevant.)

Ans. To the best of my knowledge, the certificates of stock held by Mr. Hoyt in the Quidnick Company have never been found by any one since his death. They were said to be lost. At any rate, I have never heard that any one pretends ever to have found them or either of them. The stock stood, at the time of my appointment, on the books in the name of Edwin Hoyt, and by virtue of my appointment I claimed that by operation of law that stock came to me.

Int. 21. Did you have any certificate of stock or proxy authorizing you to vote on 327 shares of the capital stock of said Quidnick Company at the time you voted with said Pomroy, as you have stated, to appoint said Harris and Gould as president and secretary of said Quidnick Company?

(Objected to as not in cross-examination and as irrelevant.)

Ans. I have not stated that I voted for Harris and Gould as president and secretary. I claimed to be the principal holding the 327 shares of stock, and therefore required no proxy; and I supposed, as administrator of the estate of Edwin Hoyt, deceased, as the stock came to me by operation of law, that I did not need a certificate of stock to enable me to vote. I was present at the meeting and made no objection to the proceedings. I do not remember whether I voted or not. I assented to the proceedings.

Int. 22. Did you or not know at the time said meeting was held that the complainant, Evan Randolph, claimed to be the legally elected president of said Quidnick Company and J. Cooke Longstreth claimed to be the legally elected secretary of said company, and that a bill in equity had been filed by said Evan Randolph in the circuit court of the United States for the district of Rhode Island and was then pending to establish said Randolph's title to 4,022 shares of the capital stock of said Quidnick Company?

(Objected to as not in cross-examination and as irrelevant.)

Ans. I did not know and I have never known either Evan Randolph or J. Cooke Longstreth. I had heard that such persons claimed to be owners of the stocks. The particulars of their claim I did not know and I did not know what offices they claimed to hold, if any. I think I had heard that a bill was filed in the circuit court, but I did not know the particulars of it. I had no doubt at that time that Mr. Pomroy properly represented the stock claimed by him.

CLAUDIUS B. FARNSWORTH.

346 Subscribed by said Claudius B. Farnsworth in my presence this tenth day of March, A. D. 1885.

I. H. SOUTHWICK, JR., *Examiner.*

Deposition of Richard B. Comstock.

RICHARD B. COMSTOCK, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Quidnick Company and others, respondents in said suit, doth depose and say as follows:

Direct examination by CHARLES S. PARKHURST, Esq.:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Richard B. Comstock; 31 years; Providence, R. I.; lawyer.

Int. 2. Were you at any time—and, if so, from what time to what time—counsel for the complainant, Evan Randolph?

Ans. The firm of Mowry & Comstock, of which I was the junior member, acted as counsel for Evan Randolph, the complainant. Mr. Mowry, the senior member of the firm, acted as counsel for Evan Randolph from some time in 1875, I think. The firm was formed in 1879, from which time until about a month previous to January, 1884, I acted as counsel for Evan Randolph.

Int. 3. Did you have any interview, while you were counsel for Evan Randolph, with ex-Governor Sprague with reference to 4,022 shares of the capital stock of the Quidnick Company to which Evan Randolph claimed title? If so, please state fully what took place at those interviews and when those interviews took place.

(That part of the interrogatory which asks of the witness to state what took place at any interview held with Governor Sprague, acting as the attorney for the complainant, in reference to said shares of stock, is objected to by W. H. Baker, Esq., on the ground that anything stated by the witness or to him is privileged.)

Ans. As the counsel for the complainant has objected as to that part of the question which the counsel for the complainant claims as privileged, I decline to answer that part of the question until instructed by the court to do so, as I understand the privi-
347 lege is the privilege of his client, Evan Randolph, and not my privilege as his counsel. In answer to the first part of the question, I did have interviews. To the best of my recollection, they were in August, 1883.

(The counsel for the complainant here makes objection to taking the deposition of this witness upon the ground that it is unlawful to do so.)

Int. 4. Did you at any time have in your possession a certificate of stock in the Quidnick Company purporting to have been issued by William Sprague, president of the Quidnick Company, and bearing date August 6, 1883, certifying upon its face that Evan Randolph, at the date thereof, was the owner of 4,022 shares of the capital stock of the Quidnick Company, which certificate was numbered 43

and a copy of which is incorporated in the answer of Zechariah Chafee in this case, which copy is now shown to you?

Ans. I did.

Int. 5. Please state from whom and at what time you received said certificate and all the circumstances of its reception by you.

Ans. The certificate was brought to the office of Mowry & Comstock by Willie Sprague, the son of ex-Governor Sprague, and my recollection is that it was handed to my partner. I think I then took it and put it in the safe. I cannot give exactly the date. To the best of my recollection, it was between the sixth and tenth of August, 1883.

Int. 6. Had you, previous to the delivery of said certificate to you, had any interviews with ex-Governor William Sprague or with Benjamin F. Butler, his counsel, or with Andrew B. Patton, also his counsel, concerning said certificate or the transfer of said shares? If so, please state what those interviews were and where they took place.

(The counsel for the complainant objects to the witness answering as to what took place at any interview with Governor Sprague, Benjamin F. Butler, and Andrew B. Patton concerning said certificate or the transfer of said shares on the ground that the same is a privileged communication.)

Ans. I had interviews previous to the delivery of the said certificate to me with ex-Governor Sprague, Benjamin F. Butler, and Andrew B. Patton. As the counsel for the complainant has objected to my answering the rest of the question on the ground that it is privileged, I decline to answer until instructed so to do by the court, for the same reason given above in answer to interrogatory 3. The interview with ex-Governor Sprague and Counsel Patton took place in Providence. The interview with Benjamin F. Butler took place in Lowell.

348 Int. 7. Please state, if you know, where the certificate of stock to which you have testified now is.

Ans. I have it.

Int. 8. Did you at any time have in your possession the record book, the stock certificate book, and the stock transfer book of the Quidnick Company; if so, when and from whom did you receive them and what disposition did you make of them?

Ans. I did have them in my possession. I do not know by whom they were brought to my office. To the best of my knowledge and recollection, I found them there one or two days after August 10th, 1883. I sent them to J. Cooke Longstreth, Esq., who had been elected secretary of the Quidnick Company.

Int. 9. Did you have any interview previous to the delivery of these books to you with ex-Governor William Sprague in reference to said books and the delivery of the same to you? If so, please state when such interview took place, and what was said to you by said Sprague concerning the same.

Ans. I did have an interview with Governor Sprague with regard to said books at or soon after the meeting of the Quidnick Company

at which Evan Randolph was elected president. I cannot give fully what was said, but the gist and substance of it was that the books should be sent to me and I should send them to Mr. Longstreth, the secretary of the company.

Int. 10. Had you made any request to Governor Sprague to deliver those books to you?

Ans. I cannot now recall any special request, but it was understood that the books should be sent to the firm of Mowry & Comstock to be sent to Mr. Longstreth.

Int. 11. Did you at any time, as the attorney of Evan Randolph, cause an attachment to be made upon the judgment held by Evan Randolph against William and Amasa Sprague upon funds supposed to belong to ex-Governor William Sprague in the hands or possession of Alvin F. Jencks, of Pawtucket or Lincoln, or in the hands of Fales & Jencks? If so, please state from whom you received the information that moneys supposed to belong to William Sprague was in the possession of those upon whom the attachment was made and about when the same was made.

(Objected to, if the knowledge was derived in any way from the complainant or his authorized agent or if it came to him by virtue
349 of his professional employment, on the ground that, if so, the communication is privileged.)

Ans. I did cause an attachment to be made on certain funds supposed to be in the hands of Alvin F. Jencks, and I do not remember whether other parties were or were not named as garnishees on a suit against William Sprague or William Sprague, trustee. As to the rest of the question I decline to answer, for the reasons in my answer to interrogatory 3.

Int. 12. Did the information upon which you acted in making said attachment come to you from the complainant or any one claiming to act for the complainant?

Ans. It did not.

Int. 13. Did said information come to you from William Sprague or Amasa Sprague or any one claiming to act for them or either of them?

(Objected to as a privileged communication if it did come to him from either of those persons or any one claiming to act for them while he was acting as attorney for Evan Randolph.)

Ans. As the counsel for the complainant has objected to my answering this question on the ground that it is privileged, I shall decline to answer until instructed to do so by the court, for the reasons stated in my answer to interrogatory 3.

In the circuit court, Tuesday, March 17, 1885, Charles H. Parkhurst, Esq., moved for a rule requiring said Richard B. Comstock to answer interrogatories 3, 6, 11, and 13; and on March 20, 1885, his honor George M. Carpenter caused a decree granting the motion to issue from said court. See certified copy of said decree, *ante*, page 15.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Int. 14 (restating Int. 3 above). Did you have any interview while you were counsel for Evan Randolph with ex-Governor Sprague with reference to 4,022 shares of the capital stock of the Quidnick Company to which Evan Randolph claimed title? If so, please state fully what took place at those interviews and when those interviews took place.

Ans. Before the filing of the bill in equity Evan Randolph *vs.* Quidnick Company *et als.*, and after the sheriff's deeds of the Quidnick stock, I sent a written communication to William Sprague, as president of the Quidnick Company, demanding the transfer
350 of the shares of stock covered by deeds to Evan Randolph, and that a certificate issue to Evan Randolph. I received a written reply from William Sprague, as president of the Quidnick Company, refusing so to transfer the stock and issue the certificate. After the filing of the bill in equity I had an interview with Governor Sprague, the substance of which was that he had been advised by his counsel to make the transfer of stock and issue the certificate to Evan Randolph. To the best of my recollection I told him that I did not know whether we would take it, but I would see Mr. Patton and Mr. Mowry and let him know. I did see Mr. Mowry and Mr. Patton, and I think in the meantime had other interviews with Governor Sprague in regard to the transfer, and, while I do not remember exactly what was said, the substance was that he would, as advised by his counsel, comply with our request, and that we would have no standing in court on our bill if we did not take the transfer. After consultation with Mr. Mowry, Mr. Patton, and Mr. Butler, Mr. Mowry and myself decided to take the transfer, provided the certificate of stock was actually delivered to us.

Int. 15 (restating Int. 6 above). Had you, previous to the delivery of said certificate to you, had any interviews with ex-Governor William Sprague or with Benjamin F. Butler, his counsel, or with Andrew B. Patton, also his counsel, concerning said certificate or the transfer of said shares? If so, please state what those interviews were and where they took place.

Ans. As stated in the answer to interrogatory 14, I had the above interviews with Governor Sprague; I also had interviews with Mr. Patton and one interview with Mr. Butler. The interviews with Mr. Patton were of the same substance and effect as the interview with Governor Sprague; and while Mr. Mowry and myself were considering the question of taking the transfer Mr. Patton came to my office and wished Mr. Mowry or myself to see Mr. Butler. Mr. Mowry had gone home that day, so I went to see Mr. Butler with Mr. Patton. We found Mr. Butler at Lowell, and Mr. Patton stated what had been decided by them to do, and most of the interview consisted of Mr. Butler stating why we should take the transfer. As I remember, the substance of the reasons given by Mr. Butler was that we had prayed for a transfer in our bill and did not see how we could help taking it. They would set up the fact that they had made the transfer in their answer to said bill.

Int. 16 (restating Int. 11 above). Did you at any time, as the attorney of Evan Randolph, cause an attachment to be made upon the

judgment held by Evan Randolph against William and
351 Amasa Sprague upon funds supposed to belong to ex-Governor William Sprague in the hands or possession of Alvin F. Jencks, of Pawtucket or Lincoln, or in the hands of Fales & Jencks? If so, please state from whom you received the information that moneys supposed to belong to William Sprague were in the possession of those upon whom the attachment was made, and about when the same was made.

(Objected to by William H. Baker, Esq., as immaterial and irrelevant.)

Ans. I received the information from Mr. Patton, and I do not remember the time when the attachment was made. It was about the time of the Quidnick stock transaction of which I have testified.

Int. 17 (restating Int. 13 above). Did said information come to you from William Sprague or Amasa Sprague or any one claiming to act for them or either of them?

(Objected to as immaterial and irrelevant.)

Ans. As I have stated, it came from Mr. Patton, who was general counsel for the Spragues.

Int. 18. What was that information which Mr. Patton gave to you?

(Objected to on the ground of irrelevancy, incompetency, and that statements of counsel made at interviews are not proper evidence.)

Ans. To the best of my recollection it was that William Sprague or William Sprague, trustee, had placed certain moneys in the hands of Mr. Jencks in connection with certain transactions with regard to the buying the United States Flax Mills, and that the money was about to be attached. I will also state that, as I remember, Mr. Patton said the matter was very mixed, and said something about the Lily Pond Land Company. I can't remember exactly how it bore on the question.

Int. 19. Who were the Mr. Patton and the Mr. Butler to whom you have referred in your previous answers, and what relation, to your knowledge, did they hold to William Sprague and Amasa Sprague and Mary Sprague and Fanny Sprague?

(Objected to as immaterial and irrelevant.)

Ans. Mr. Patton to whom I refer is Andrew B. Patton, Esq., of Johnston, R. I. The Mr. Butler to whom I refer is Benjamin F. Butler, of Lowell, Mass. They were, as I understood, acting as counsel for the Spragues above named in the litigation growing out of the failure of the said Spragues.

Int. 20. Had they, to your knowledge, acted as counsel for the said Spragues in this litigation now pending in reference to the title of said 4,022 shares of the Quidnick stock?

352 (Objected to as immaterial and irrelevant.)

Ans. Whether or not Mr. Patton and Mr. Butler actually ap-

peared for the said Spragues in this bill I cannot now state. I understood during my negotiations with Mr. Patton and Mr. Butler that they were counsel for said Spragues.

Int. 21. Is the Benjamin F. Butler to whom you have referred the same Benjamin F. Butler who appears as counsel for the complainant in this pending suit in connection with William H. Baker?

Ans. Yes.

Cross-examination by WILLIAM H. BAKER, Esq.:

Interrogatory 1. You have stated in answer to interrogatory 7 that you have the certificate of stock issued to Evan Randolph by William Sprague, president of the Quidnick Company, embracing the 4,022 shares of stock in controversy. Please state why you retain possession of said certificate.

Answer. After the receipt of said certificate by the firm of Mowry & Comstock it was placed in the hands of Frank B. Greene by me, and on the commencement of proceedings in the State court, and on the statement by the counsel of Gorham P. Pomroy they would have to make F. B. Greene party to said proceedings, I promised the counsel that I would procure said certificate from the said Greene and hold it; also an order or decree of the supreme court of Rhode Island has been served on me forbidding me to make any disposal thereof. There is also a decree from said supreme court in a cause in equity, No. 2161, Gorham P. Pomroy, assignee, *vs.* Evan Randolph *et al.*, declaring said certificate to be void; and for these reasons, and from the fact that it was an important piece of evidence in this bill, I deemed it my duty to hold said certificate.

Int. 2. In your answer to interrogatory 17, restating interrogatory 13, you have stated that you received information from Mr. Patton, who was general counsel for the Spragues, concerning funds in the hands of Alvin F. Jencks, of Pawtucket, which was supposed to belong to William Sprague. Please state whether this information was given to you by Mr. Patton, acting as the attorney for said Spragues or any of them, or whether it was purely a voluntary piece of information given to you by Mr. Patton personally without reference to his professional employment.

Ans. As in what capacity Mr. Patton gave me the information I cannot state, as that is a matter within his own mind. I do
353 state that he gave me the information, and that he was the general counsel for the Spragues. He did not state to me, as I remember, that he gave it in any capacity.

Redirect examination by CHARLES H. PARKHURST, Esq.:

Int. 22. Is the paper now shown to you a copy of the decree in equity, No. 2161, to which you have referred in your cross-examination? If so, please annex it as an exhibit to your deposition.

Ans. It is, and I hereby annex it.

RICHARD B. COMSTOCK.

(The paper referred to is hereunto annexed, marked Exhibit 26.)

Subscribed by the said Richard B. Comstock in my presence this sixteenth day of April, A. D. 1885.

ISAAC H. SOUTHWICK, JR., *Examiner.*

EXHIBIT 26.

Referred to by Richard B. Comstock in his answer to interrogatory 22 of his foregoing deposition.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

Supreme Court. October Term, 1883.

GORHAM P. POMROY, Assignee, *vs.* EVAN RANDOLPH *et als.* } Equity, 2161.

This cause came on to be heard before the court; and it appearing to the court that Evan Randolph and J. Cooke Longstreth, two of the respondents in said cause, have been personally served with the subpœna in said cause and have failed to enter their appearance in said cause or to file any answers therein, and that by the decree of said court in said cause, November 5, A. D. 1883, the bill of complaint in said cause was taken as confessed as against said Evan Randolph and said J. Cooke Lonstreth—

354 It is now, on this seventy-second day of said term, upon motion of the complainant, after the reading of the bill of complaint in said cause, duly sworn to by the complainant—

Ordered, adjudged, and decreed by the court, as against said Evan Randolph and J. Cooke Longstreth, as follows:

First. That by force and virtue of the decrees in said bill recited and set forth, appointing the said complainant assignee of William Sprague of 1,082 shares of the capital stock of the Quidnick Company, and assignee of Amasa Sprague of 1,082 shares of the capital stock of said Quidnick Company, and assignee of Mary Sprague of 601 shares of the capital stock of said Quidnick Company, and assignee of the A. & W. Sprague Manufacturing Company of 455 shares of the capital stock of said Quidnick Company in place of Fanny Sprague, removed by said court from her trust as assignee of said Amasa Sprague, William Sprague, Mary Sprague, and said A. & W. Sprague Manufacturing Company of said shares of said capital stock of said Quidnick Company, and assignee of Fanny Sprague of 802 shares of the capital stock of said Quidnick Company in place of Mary Sprague, removed by said court from her trust as assignee of said Fanny Sprague of said shares of said stock, the said complainant is entitled to all the shares of the said capital stock conveyed to said Fanny Sprague, assignee, by said Amasa Sprague, Mary Sprague, William Sprague, and said A. & W. Sprague Manufacturing Company, by transfers made by them respectively upon

the stock transfer book of said Quidnick Company on or about December 22, 1873, in said bill of complaint set forth, being 3,220 shares of the said capital stock of said Quidnick Company, subject to the lawful claims of the respondent, Zechariah Chafee, upon said shares, as set forth in said bill of complaint, if any such lawful claims there be, and is also entitled to all the shares of the said capital stock of said Quidnick Company, 802 in number, conveyed by said Fanny Sprague to said Mary Sprague by transfer made by said Fanny Sprague to said Mary Sprague upon the stock transfer book of said Quidnick Company on or about December 22, 1873, in said bill of complaint set forth, subject to the lawful claims of said Zechariah Chafee on said shares, as set forth in said bill of complaint, if any such lawful claims there be, and is entitled to vote upon all said 4,022 shares of said capital stock at all meetings of said Quidnick Company.

Second. That the certificate of 4,022 shares of the capital stock of said Quidnick Company issued to said Evan Randolph by William Sprague, claiming to be president of said Quidnick Company,
355 bearing date August 6, 1883, numbered 43 in the complainant's bill set forth, was wrongfully and illegally issued by said William Sprague to said Evan, and is void and of no effect, and said Evan Randolph is hereby decreed to deliver up said certificate to the complainant, that the same may be cancelled.

Third. That the said respondents, Evan Randolph and J. Cooke Longstreth, and each of them, their agents, servants, employés, and officers, and all persons claiming under them or either of them, are hereby perpetually enjoined from acting or claiming to act as stockholders of said Quidnick Company, and from asserting any title to any of the said shares of the capital stock of said Quidnick Company, and from in any way interfering with or disturbing the complainant in his rights as holder and owner, as assignee as aforesaid, of said 4,022 shares of said capital stock of said Quidnick Company, and from voting or attempting to vote upon any of said shares of said stock, and from attending upon or holding any meetings of said Quidnick Company, and from interfering in any way with any of the affairs or business of said Quidnick Company.

Entered as the decree of the court this seventy-second day of the October term, 1883 (Dec. 29, 1883).

By order: HERBERT ALMY,
Assistant Clerk.

Enter.
J. H. STINESS, *J. S. C.*
G. M. CARPENTER, *J.*

A true copy.
Attest: [L. S.] CHARLES BLAKE, *Clerk.*

Stipulation No. 2.

It is agreed that all the exhibits annexed to the respondent's answers shall be admitted as testimony in the cause with the same

effect as if the same had been produced and verified before the exa
iner.

Witness in the presence of the counsel in this cause making t
foregoing stipulation.

ISAAC H. SOUTHWICK, JR., *Examiner.*

356 Circuit Court of the United States, District of Rhode Islan
In Equity.

EVAN RANDOLPH
vs.
QUIDNICK COMPANY *et al.* } No. 2059.

Vol. II.

EXHIBITS A 1 TO A 4, INCLUSIVE.

357 Circuit Court of the United States, District of Rhode Islan
June Term, A. D. 1884.

FRANCIS D. MOULTON
v.
ZECHARIAH CHAFEE *et al.* } In Equity. No. 2030.

A. & A. D. Payne, Augustus M. Cunningham, counsel for co
plainant.

C. Frank Parkhurst, James Tillinghast, Chas. Hart, Benj.
Thurston, A. B. Patten, counsel for defendants.

358 Circuit Court of the United States in and for the District
Rhode Island. In Equity.

FRANCIS D. MOULTON
v.
ZECHARIAH CHAFEE *et al.*

Bill of Complaint. (*Filed Sept.* 6, 1882.)

To the honorable the judges of the circuit court of the United State
in and for the district of Rhode Island, sitting in equity:

Francis D. Moulton, of the city, county, and State of New Yor
in the southern district of the State of New York, and a citizen
the said State of New York, brings this his bill against Zecharia
Chafee, claiming to be a trustee as hereinafter set forth, of Prov
dence, in the district of Rhode Island, and a citizen of said State
Rhode Island, and William Sprague, of South Kingston, in th
district of Rhode Island, and a citizen of said State of Rhod
Island (see amendment); and thereupon your orator complaine
and says:

First. That on the tenth day of July, A. D. 1882, the responden
Chafee, hereinbefore named, claiming to be a trustee, did advertis
for sale, in the Providence Daily Journal, a newspaper publishe

and printed in said Providence, in said district of Rhode Island, a certain valuable estate situated in the State of Rhode Island, which said estate was fully described in the advertisement of the sale thereof inserted or caused to be inserted in said newspaper by said Chafee; for a more particular description of which said estate
359 and for the terms of the sale thereof and for the time of the sale thereof reference is hereby made to said advertisement, a copy whereof is hereunto annexed, marked "Exhibit A," which your orator prays may be taken as a part of this his bill of complaint.

Second. And your orator further shows unto your honors that on the day named in said advertisement as the day when said property would be sold he attended said sale and bid on said property, and that the same was struck off to him, he being the highest bidder thereon, for the sum of sixty-two thousand two hundred and fifty dollars ($62,250), and that he then and there paid to the said Chafee, claiming to be a trustee as here aforesaid, the sum of three thousand one hundred and twelve dollars and fifty cents ($3,112.50), being five per cent. of the said sum of sixty-two thousand two hundred and fifty dollars ($62,250) bid by your orator for said property, and for which said property was sold to your orator, in accordance with the terms of sale set forth in said advertisement.

Third. And your orator further shows unto your honors that thereafterwards, to wit, on the twenty-fourth day of August, A. D. 1882, and within ten days from said sale, in accordance with the terms of said sale as set forth in said advertisement, he tendered to said Chafee, claiming to be a trustee as aforesaid, at his office, No. 3 Exchange Place, in said Providence, the sum of twelve thousand four hundred and fifty dollars ($12,450), being twenty per cent. of said sum of sixty-two thousand two hundred and fifty dollars ($62,250) bid by your orator for said property as aforesaid, and for which said property was sold to your orator as aforesaid, in accordance with the terms of sale set forth in said advertisement, and did demand possession of said property, in accordance with the terms of sale set forth in said advertisement, and did then and there offer, if the said Chafee, claiming to be a trustee as aforesaid, did desire it, to meet him, the said Chafee, on the said property on the twenty-fifth day of August, A. D. 1882, the said last-named day being within ten days from said sale, and there to make payment of said sum of twelve thousand four hundred and fifty dollars ($12,450), being twenty per cent. of said sum of sixty-two thousand two hundred and fifty dollars ($62,250) as aforesaid, upon the delivery to your orator of possession of said property,
360 and that the said Chafee did then and there express a desire that such a course should be pursued, and that thereafter, to wit, on said twenty-fifth day of August, A. D. 1882, in accordance with the agreement above set forth, your orator did meet the said Chafee on the said property and did then and there tender to him the said sum of twelve thousand four hundred and fifty dollars ($12,450), being twenty per cent. of said sum of sixty-two thousand two hundred and fifty dollars ($62,250) as aforesaid, and did demand

possession of said property in accordance with the terms of sale as set forth in said advertisement; but your orator avers that then and there the said William Sprague, hereinbefore named, was in possession of said property and refused to deliver up the same, and so the said Chafee, claiming to be a trustee, was unable to deliver possession of said property to your orator, and did therefore neglect and refuse to deliver possession of said property to your orator or to receive said sum of twelve thousand four hundred and fifty dollars ($12,450) as aforesaid, and ever since hath neglected and refused to do so.

Fourth. And your orator further shows unto your honors that he is advised and believes and therefore avers that the said William Sprague claims to hold possession of said property by a good and valid title, but whether such claim is a good and valid one and what is the nature of said title so claimed by said William Sprague your orator is not advised and cannot therefore here set forth or aver, but he prays that the said William Sprague, in his answer to this your orator's bill of complaint, may be required to set out and disclose fully what the nature of title is by which he claims the right to the possession of said property, and your orator prays for the determination of this honorable court upon the validity of said claim and title when so disclosed.

Fifth. And your orator further shows unto your honors that he is advised and believes and therefore avers that the said Zechariah Chafee, claiming to be a trustee as aforesaid, claims the right to the possession of said property by a good and valid title, but whether such claim is a good and valid one and what is the title so claimed by the said Chafee, claiming to be a trustee, your orator is
361 not advised and cannot therefore here set forth or aver, but he prays that the said Zechariah Chafee, claiming to be a trustee, in his answer to this your orator's bill of complaint, may be required to set out and disclose fully what the nature of the title is by which he claims the right to the possession of said property, and your orator prays the determination of this honorable court upon the validity of said claim and title when so disclosed. (See amendment.)

Sixth. And your orator further shows unto your honors that he has always been and is now ready and willing to carry out his part of the contract of purchase and sale of said property whenever the said Chafee, claiming to be a trustee as aforesaid, shall carry out his part of said contract by delivering to your orator possession of said property and a good and valid title in law and equity thereto; and your orator further shows unto your honors that by reason of the said William Sprague holding possession of said property and the consequent inability, neglect, and refusal of the said Chafee, claiming to be a trustee as aforesaid, to deliver possession thereof with a good and valid title to your orator, your orator is subject to great pecuniary loss and damage, which said loss and damage will go on increasing so long as the said Sprague shall continue to hold possession of said property, and the said Chafee, in consequence, be unable, neglect, and refuse to deliver possession thereof to your orator with a good and valid title.

And your orator has well hoped that no disputes would have arisen touching the premises, but that the said defendants would have complied with the reasonable request of your orator, and that the said William Sprague would have surrendered possession of said property, and the said Chafee, claiming to be a trustee as aforesaid, would have delivered possession thereof to your orator with a good and valid title in accordance with the terms of sale as set forth in said advertisement, as in justice and equity they ought to have done.

But now so it is, may it please your honors, that the said William Sprague and Zechariah Chafee, claiming to be a trustee as aforesaid, absolutely refuse to comply with the just and reasonable request of your orator in the premises.

All which actings, doings, refusals, and pretences of the said
362 defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises. In consideration whereof, and inasmuch as your orator is remediless at and by the strict rules of the common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable—

To the end, therefore, that the said William Sprague and Zechariah Chafee, claiming to be a trustee (see amendment), may full, true, and perfect answer make, any oath to said answer being hereby expressly waived, to all and singular the premises as fully and particularly as if they were here thereunto expressly interrogated, and that each of the said defendants may in their said answers set forth and fully disclose by what claim and title they each respectively claim the right to the possession of said property or the title thereto or any lien thereon, and that this honorable court may determine to whom belongs the title to said property and the right to the possession thereof and the validity of any lien thereon, and that in case this honorable court shall determine that the title to said property and the right to the posession thereof resides in said Chafee, claiming to be a trustee as aforesaid, that the said William Sprague may be decreed to surrender the possession of said property to the said Chafee, claiming to be a trustee as aforesaid, and the said Chafee, claiming to be a trustee as aforesaid, be decreed to perform specifically his part of the said contract of purchase and sale by delivering possession of said property to your orator, with a good and valid title thereto, in accordance with the terms of sale as set forth in the said advertisement, and to pay to your orator all intervening costs and damages sustained by your orator by reason of the breach of said contract of purchase and sale by said Chafee, claiming to be a trustee as aforesaid; or in case this honorable court shall determine that the title to said property and the right of possession thereof resides in said William Sprague, or if for any reason this honorable court shall determine that the said Chafee, claiming to be a trustee as aforesaid, is unable to give a good and valid title to said property, then that the said Chafee, claiming to be a trustee as aforesaid, may be decreed to return to your orator the sum of money already
363 paid by your orator to the said Chafee, claiming to be a trus-

tee as aforesaid, and to account to your orator for the loss and damage sustained by your orator by reason of the inability, neglect, and refusal of the said Chafee, claiming to be a trustee as aforesaid, to specifically perform his part of said contract of purchase and sale as aforesaid, and to deliver to your orator possession of said property with a good and valid title thereto, and that in the mean time and during the pending of this suit and until the final determination thereof the said William Sprague and Zechariah Chafee, claiming to be a trustee as aforesaid, may be restrained from in any manner altering, modifying, changing, transferring, or conveying the title to said property or the possession thereof as they at present stand, and that your orator may have such other and further relief as to justice and equity may appertain and your honors may seem meet—

May it please your honors to grant unto your orator the most gracious writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said defendants (see amendment) and each of them, commanding them and each of them, on a certain day and under a certain penalty to be therein personally limited, personally to be and appear before your honors in this honorable court and then and there full, true, and perfect answer make to all and singular the premises, and show cause, if any they have, why your orator should not have the relief herein and hereby prayed for, and, further, to stand to, abide by, and perform such order and decree in the premises as to justice and equity may appertain and to your honors shall seem meet.

And, as in duty bound, will ever pray, etc., etc., etc.

FRANCIS D. MOULTON.

A. & A. D. PAYNE, *Solicitors.*

ARTHUR D. PAYNE,
AUGUSTUS M. CUNNINGHAM,
ABRAHAM PAYNE,
Of Counsel.

364 STATE OF RHODE ISLAND, *County of Providence:*

In the city of Providence, in said county and State, in the district of Rhode Island, this sixth day of September, A. D. 1882, personally appeared Francis D. Moulton, of the city, county, and State and southern district of New York, and made solemn oath that the facts and statements set forth in the foregoing bill of complaint by him subscribed, so far as they are stated of his own knowledge, are true, and so far as they are stated on information and belief are true, to the best of his information and belief.

Before me—

CHARLES M. SALISBURY,
Notary Public.

EXHIBIT "A."

Sales at Auction.

By Wm. H. Hall, auctioneer, No. 49 Weybosset street.

Elegant summer residence at Narragansett Pier, known as Canonchet, at auction.

Will be sold at public auction on Tuesday, the 15th day of August, A. D. 1882, at 12 o'clock m., on the premises, all that valuable estate lying about one mile northerly of Narragansett Pier, in South Kingston, R. I., known as the "Canonchet estate," with all the buildings and improvements thereon, including fine mansion house of more than sixty rooms, and having bath-rooms, water closets, ranges, heating apparatus, laundry, and all the modern improve-
365 ments, with stables and a house for gardener or coachman, with a water supply from a fountain fed by pipes with pure spring water. In front of said mansion house are two large ponds with an area of 19.75 acres, and these, with the other natural beauties of the place, render it possible for this estate to be made one of the finest summer residences in the world. There is also a stretch of 5,200 feet of the finest beach, where the best surf bathing may be had.

Said estate contains about 408¼ acres of fine farming land, lying on both sides of the road from Kingston to Narragansett Pier, being one parcel of 79.88 acres lying on the south side of said road, part of which may be flowed and used for a cranberry meadow and the rest for arable or pasture land. On the north side of said road are 328.27 acres, suitable for all farming purposes, with a farm-house and stables for horses and cattle.

Terms of sale: Five per cent. cash at time of sale, 20 per cent. cash on delivery of possession within ten days from sale, and 15 per cent. on the fifteenth day of each month, beginning with the fifteenth of September next ensuing; interest to be charged at the rate of 6 per cent. per annum; deed to be delivered on final payment, and all payments except the first to be made to the undersigned, at his office, No. 3 Exchange Place, Providence, where detailed information may be had and plats may be seen.

By order of—

ZECHARIAH CHAFEE, *Trustee.*

July 10, 1882. (15) dis jy10

Motion for Leave to Amend the Bill of Complaint. (*Filed March* 30, 1883.)

To the honorable the judges of the circuit court of the United States in and for the district of Rhode Island, sitting in equity:

Respectfully represents Francis D. Moulton, of the city, county, and State of New York, in the southern district of New York, and

a citizen of the said State of New York, the complainant in the above-entitled suit in equity—

366 First. That he filed the original bill of complaint in the cause in the clerk's office of this honorable court on the sixth day of September, 1882.

Second. That process of this honorable court was duly issued thereon and served upon the parties named therein as defendants.

Third. That each of the parties named therein as defendants has entered an appearance in said cause and filed a several answer to said bill of complaint.

Fourth. That in and by an amendment to the answer of one of the said defendants, to wit, William Sprague, which the said Sprague has moved this honorable court for leave to make, that one Thomas C. Greene, of Providence, in the county of Providence and State of Rhode Island, and a citizen of said State of Rhode Island, as receiver of the Franklin Institution for Savings, a corporation duly incorporated under and by virtue of the laws of the State of Rhode Island, claims a title to the real estate known as Canonchet in the said bill of complaint referred to by virtue of a purchase thereof by his predecessor in said office of receiver, to wit, one Winthrop DeWolf, now deceased, at an execution sale of the same upon an execution issued from the supreme court of the State of Rhode Island, upon a judgment obtained in an action at law brought by the said Franklin Institution for Savings against the A. & W. Sprague Manufacturing Company.

Fifth. That in and by the said answer as aforesaid it appears that one Evan Randolph, a citizen of the State of Pennsylvania, as a creditor of a business copartnership under the firm name and style of Hoyt, Spragues & Co., of which said copartnership the said Sprague was a member, has brought suit in the circuit court of the United States against the surviving members of said copartnership and made a levy by a writ in the nature of a writ of mesne process upon the real estate known as Canonchet in said bill of complaint referred to, and that the levy of the same writ now remains upon the said property.

Sixth. That in and by the said answer of the said respondent, Sprague, and also in and by the answer of the other respondent in said bill of complaint, to wit, Zechariah Chafee, that Edward H. Robinson, James M. Kimball, and B. A. Jackson, all of Provi-

367 dence, in the county of Providence and State of Rhode Island, and all citizens of said State of Rhode Island, as trustees under an alleged deed of trust made by the National Bank of Commerce, as grantors to the said Robinson, Kimball, and Jackson as grantees and trustees, claim a title to the said real estate known as Canonchet in said bill of complaint referred to.

Wherefore and in consideration whereof the complainant, the said Francis D. Moulton, now comes into court and moves for leave to amend his said bill of complaint by inserting therein, on the first page thereof, on the seventeenth line from the top thereof, between the words "State of Rhode Island" and the words "and thereupon," the following words, viz: "Thomas C. Greene, of East Greenwich,

in the county of Kent, in the district and State of Rhode Island, and a citizen of said State of Rhode Island, as he is receiver of the Franklin Institution for Savings, a corporation duly incorporated by the General Assembly of the State of Rhode Island and located and doing business now or formerly in said State and district of Rhode Island; Evan Randolph, of Philadelphia, in the State of Pennsylvania, and a citizen of said State of Pennsylvania; Edward H. Robinson, James M. Kimball, and B. A. Jackson, all of Providence, in the State of Rhode Island, and all citizens of said State of Rhode Island, trustees."

And for leave to further amend his bill by inserting therein, on the fifth page thereof, between the twenty-seventh and twenty-eighth lines from the top of said page, the following averments:

"And your orator is advised and believes and therefore avers that the said respondent, the said Thomas C. Greene, receiver as aforesaid, claims a good and valid title to the property and estate known as Canonchet, but whether said claim is a good and valid one and what is the nature of said title so claimed your orator is not advised and cannot therefore here set forth or aver; but your orator prays the said Thomas C. Greene, receiver, in his answer to this your orator's said bill of complaint may be required to set out and disclose fully what the nature of the title is which he claims in and to the said property and estate, and your orator prays for the determination of this honorable court upon the validity of said claim and title when disclosed.

368 "And your orator is advised and believes and therefore avers that the said Evan Randolph claims a lien upon the property and estate known as Canonchet, hereinbefore referred to, but whether said lien is a good and valid one and what is the nature and extent thereof your orator is not advised and cannot therefore here set forth and aver; but your orator prays that in his answer to this your orator's said bill of complaint the said Evan Randolph may be required to set forth and fully disclose what is the nature and extent of the lien which he claims upon said property and estate, and your orator prays for the determination of this honorable court upon the validity of said claim and lien when disclosed.

"And your orator is advised and believes and therefore avers that Edward H. Robinson, James M. Kimball, and B. A. Jackson, hereinbefore named as parties respondent, claiming to be trustees as aforesaid, claim a good and valid title to the property and estate known as Canonchet, hereinbefore referred to, but whether the said claim is a good and valid one, and what is the nature of the title so claimed by the said Robinson, Kimball, and Jackson as trustees as aforesaid, your orator is not advised and cannot therefore here set forth or aver; but your orator prays that the said Robinson, Kimball, and Jackson, in their answer to this your orator's said bill of complaint, may be required to set forth and fully disclose what the nature of the title is which they claim in and to the said property and estate, and your orator prays for the determination of this honorable court upon the validity of said claim and title when disclosed."

And for leave to further amend his bill by inserting therein, on

page 7 thereof, on the twenty-fifth line from the top of said page, between the words "claiming to be a trustee" and the words "may full, true, and perfect answer make," as follows, viz: "The said Thomas C. Greene, receiver as aforesaid; the said Evan Randolph, and the said Edward H. Robinson, James M. Kimball, and B. A. Jackson, trustees as aforesaid."

And for leave to further amend his said bill as follows, viz., by striking out the word "and," between the words "property" and "the title," on the second line from the top of the eighth page of said
369 bill, and substituting therefor the word "or," and by inserting on the second line from the top of said eighth page of said bill, between the words "title thereto" and "and that," the words "or any lien thereon," and by inserting on said eighth page of said bill, on the fifth line from the top thereof, between the words "possession thereof" and "and that," the words "and the validity of any lien thereon."

And for leave to further amend his said bill by inserting on the ninth page thereof, on the twenty-third line from the top of said page, between the words "said defendants" and "and each of them," the following words, viz: "To wit, the said William Sprague, the said Zechariah Chafee, claiming to be a trustee as aforesaid; the said Evan Randolph, the said Thomas C. Greene, receiver as aforesaid, and the said Edward H. Robinson, James M. Kimball, and B. A. Jackson, trustees as aforesaid."

FRANCIS D. MOULTON.
By his solicitors, A. & A. D. PAYNE.

Answer of Zechariah Chafee. (*Filed Nov.* 26, 1882.)

The answer of Zechariah Chafee, one of the defendants to the above-entitled bill of complaint.

This defendant, saving and reserving unto himself all benefit and advantage of exception to the many errors, inconsistencies, and insufficiencies in said bill of complaint contained, for answer thereunto, or to so much or such part thereof as he is advised is material and necessary for him to make answer unto, answering, says:

First. This respondent admits that he did advertise certain premises in the town of South Kingston, known as Canonchet, in his capacity as trustee, under certain instruments hereinafter to be mentioned, for sale upon the terms as contained in "Exhibit A," annexed to the bill of complaint; and this respondent further avers that such advertisement and the sale made thereunder was in obe-
370 dience to the decrees of the supreme court of Rhode Island, entered in the case of the Quidnick Company *v.* Chafee *et als.*, No. 1927, copies of which decrees are hereto annexed and made a part of this answer, marked "Exhibits 1 and 2," and reference to which decrees and to the records and files of said cause is hereby made as a part of this answer.

Second. This respondent admits that the complainant was the highest bidder at the auction sale had of said premises, and that the

same were struck off to him for the sum of $62,250, and that in compliance with the conditions of sale five per cent. of the amount of said bid, or $3,112.50, was then and there paid by the complainant.

Third. This respondent admits that the complainant afterwards came to the office of said Chafee and expressed his willingness to pay over the stipulated sum of twenty per cent. of the purchase-money, according to the terms of sale, upon receiving possession of said premises, as stated in the bill, and demanded possession of said premises as by him purchased; and afterwards, on the twenty-fifth day of August, A. D. 1882, this respondent went to South Kingston and there met the complainant for the purpose of delivering possession, as set forth in the bill, and this defendant claims that he then and there delivered to the complainant possession thereof, so far as he was under any obligation to do so; but the said defendant, William Sprague, being in the actual occupation of the house upon said premises under the circumstances as hereinafter set forth, then and there forbade this respondent and all others, with threats of violence and show of armed force, from entering upon the premises, and, all approach to the said premises having been barricaded and guarded with an armed force by said Sprague, the said complainant refused to accept such possession and to pay over the said stipulated sum of money.

Fourth. This respondent admits that he does, as trustee, claim the right to the possession of said premises by a good and valid title, and that his title thereto is as follows:

1. By a certain instrument of mortgage, bearing date on Nov. 1, 1873, and duly executed, as will appear by a copy of said instrument hereunto annexed and made a part of this answer,
371 marked 3, and of the original, of which this respondent makes profert at the hearing of this cause.

2. By four certain deeds of assignment made and executed by William Sprague, Amasa Sprague, the A. & W. Sprague Manufacturing Company, and A. & W. Sprague, bearing date, respectively, on the sixth day of April, 1874, copies of which are hereunto annexed, marked 4, 5, 6, and 7, respectively, and made a part of this answer, and of the originals of which this respondent makes profert at the hearing of this cause.

3. That heretofore the National Bank of Commerce, in New York, being a creditor of the A. & W. Sprague Manufacturing Company and of Amasa & William Sprague, and having never accepted the terms of the trust mortgage hereinbefore set forth or become parties thereto by accepting notes under the same, brought their suit in this court and attached the said premises known as Canonchet, as well as other real estate of the debtors; and the said Bank of Commerce, having recovered judgment in said action and execution for the amount of said judgment, levied the same upon the real estate so attached and became purchasers at the execution sale thereof, and afterwards, to wit, on the fourteenth day of February, A. D. 1881, for a valuable consideration, sold, assigned, and conveyed all their right, title, and interest in and to the said real estate, including the

said property in South Kingston, known as Canonchet, to Edward H. Robinson, James M. Kimball, and Benjamin A. Jackson, as trustees for the creditors of the Sprague estate under said trust mortgage, and such trustees are bound to and are ready to make conveyance of all the right, title, and interest which they have in and to any portion of the premises so conveyed to them to any purchaser of the same premises or any part thereof at any sale under the trust mortgage made by this respondent, and this fact was openly stated at the public sale of the premises known as Canonchet by the said Chafee, and was well known to the complainant; and this respondent avers that he is ready and is able to deliver to the said complainant when he shall have complied with the conditions of sale, in addition to the proper conveyances to be made by this respondent, a further conveyance from the said Kimball, Robinson,
372 and Jackson, trustees, conveying all their right, title, and interest, if any, which they may or can have in and to said premises so purchased.

This respondent further avers that he entered into the possession of all the Sprague estates and properties immediately upon the delivery to him of the conveyances hereinbefore mentioned, and afterwards permitted the said William Sprague and his family to occupy the premises until such time as in his discretion it would be advisable and for the best interests of creditors to make sale of the property, and for the reason that the said premises known as Canonchet derived their principal value from the fact that an extensive villa had been erected thereon which required care and custody to prevent it, from the injury and depreciation that would result in case the premises were unoccupied, and as such custodian the said William Sprague was in the occupation of the premises and not otherwise; and this respondent denies that the said William Sprague has any right, title, or interest of any nature whatsoever in the premises.

Fifth. And this respondent further says that as to all those matters set out in the sixth article of the bill of complaint the said complainant well knew at the time when said auction sale was had, and at and before the making by him of the highest bid therefor, that the said William Sprague intended to forcibly prevent any person from entering upon the premises for the purpose of enjoying the same as a purchaser at said sale; that the said Sprague then and there openly declared that he intended to exclude any entrance upon the premises, and had not only posted a written notice upon the public approach thereto, but maintained an armed guard at the house and on the grounds within the enclosure, and threatened that any person entering would do so at the peril of personal injury.

And thereupon, this respondent caused to be openly stated to the company there assembled that he proposed to sell all his right, title, and interest as trustee and assignee in the said premises to the highest bidder therefor; that the counsel for the said William Sprague, acting in his behalf, undertook to throw doubt and discredit upon the title of this respondent, setting forth, among other things, that the estate had once been sold at an execution sale by the Bank

373 of Commerce in New York; and, furthermore, that a creditor had recently attached the same estate; whereupon, in reply, it was specifically stated, in the presence and hearing of the said Moulton and that of the company there assembled, that such title, if any, which passed to the said Kimball, Robinson, and Jackson, trustees, from the Bank of Commerce would be made to the purchaser at the sale, and that it was well understood that all the estate sold was the right, title, and interest of said Chafee under said deeds hereinbefore set forth and said Bank of Commerce title; that, with a full knowledge of all these facts and of the then situation and of the attitude of the said William Sprague, the said complainant made the highest bid for the property, and the same was struck off to him as the purchaser; and this respondent submits to this honorable court, in view of the premises, that he was not afterwards bound to deliver any other possession to the said complainant than he did in fact deliver on the said twenty-fifth day of August, 1882.

And this defendant further says that he always has been and is now ready to perform his contract according to the terms and conditions of sale, but the said Moulton has refused to make payment of the twenty per cent. of the purchase-money, as required by said conditions.

And this defendant submits to this honorable court that said complainant is bound to carry out the said contract of sale according to said terms and conditions, and this defendant is entitled to a decree in his favor against said complainant accordingly.

ZECHARIAH CHAFEE.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHAS. HART,
B. F. THURSTON,
Solicitors and Counsel for Defendant Chafee.

UNITED STATES OF AMERICA, *District of Rhode Island,* } *sc:*

In the city of Providence, in said district, this twenty-seventh day of October, A. D. 1882, then and there personally ap-
374 peared the within and above named Zechariah Chafee and made oath that the statements of the aforegoing answer so far as stated of his own knowledge are true, and so far as stated upon his information and belief are true to the best of his knowledge, information, and belief.

Before me—

C. FRANK PARKHURST,
Notary Public.

EXHIBIT 1.

Supreme Court. October Term, 1881.

QUIDNICK CO. *v.* Z. CHAFEE *et al.* } In Equity. No. 1927.

This cause came on to be heard before the full court and was argued by counsel for the respective parties; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed—

First. That the A. & W. Sprague Manufacturing Co. is not indebted to the Quidnick Co. under the contract dated December 18th, 1873, in the pleadings referred to.

Second. That the complainant is entitled to an account and repayment of all sums which said defendant, Chafee, by virtue of his position as treasurer of said Quidnick Co., has used of the moneys of or belonging to said Quidnick Co. for the payment of creditors holding the mortgage notes of said A. & W. Sprague Manufacturing Co., secured under the trust mortgage from A. & W. Sprague Manufacturing Co. to said Chafee, as trustee in the pleadings mentioned, or for the benefit of his trust estate under said mortgage, for purposes not within or under said contract of Dec. 18th, 1873, and it is referred to Samuel W. Peckham, Esq., as master, to take and state the accounts between said parties in respect thereof.

Third. It appearing that said property cannot be held to await such account except at great and ruinous expense, said
375 Chafee is hereby directed to proceed and advertise and sell the same and deposit the net proceeds of each and every sale he may make in the Rhode Island Hospital Trust Co., in Providence, upon its participation account, in his name as trustee, not to be withdrawn except by order of this court or some justice thereof, and either party may from time to time apply to the court for any directions to said trustee in relation to such sales to be entered.

(Signed) J. H. STINESS, *J. S. C.*
P. E. TILLINGHAST, *J. S. C.*

Entered as decree of court, 30th day, O. T., 1881 (Nov. 5, 1881).
By order:

(Signed) HERBERT ALMY,
Assistant Clerk.

EXHIBIT 2.

PROVIDENCE, *sc:*

Supreme Court. March Term, A. D., 1882.

QUIDNICK COMPANY *vs.* Z. CHAFEE *et als.* } In Equity. No. 1927.

This cause came again before this court on the 24th day of May, A. D. 1882, upon the report of Zechariah Chafee, trustee and

assignee, setting forth his failure to effect a sale of the estates mentioned in the decree of March 22, A. D. 1882, under the terms named in said decree, and that no bidder appeared to offer the upset price required by said decree to start the sale, and asking for instructions in the premises; and now, upon consideration of the facts set forth in said report and of the cause, it is ordered, adjudged, and decreed—

First. That the said decree of March 22d, A. D. 1882, be, and the same is hereby, rescinded.

Second. The third clause of the order of this court, entered November 5th, A. D. 1881, is hereby revived and re-established,
376 with the amendment striking out the words "upon its participation account," and adding the following: "Provided, however, That if said Chafee shall receive an offer for the entire estate for a price satisfactory to him he may sell the same at private sale upon terms substantially similar, except in amount, to those embodied in our order of March 22d, 1882; and in case of such sale the proceeds received from time to time by the said Chafee may be distributed as was provided in said order of March 22d, 1882."

Enter.

(Signed) J. H. STINESS, *J. S. C.*
P. E. TILLINGHAST, *J. S. C.*

Entered as decree of court May 24, 1882.

By order:

(Signed) HERBERT ALMY.
Assistant Clerk.

EXHIBIT 3.

This indenture, made and entered into this first day of November, A. D. eighteen hundred and seventy-three, by and between the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island and transacting business in the city of Providence; William Sprague, of South Kingston; Amasa Sprague, of Cranston; Mary Sprague, widow of William Sprague, deceased; Fanny Sprague, widow of Amasa Sprague, deceased, of said Providence, all in said State, and the said Amasa Sprague and William Sprague, as copartners doing business under the firm of A. & W. Sprague, as parties of the first part, and Zechariah Chafee, of said Providence, as party of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Company and the said A. & W. Sprague and said Amasa Sprague and William Sprague, individually, are now indebted or under liability, primary or secondary, in divers sums of money to divers persons, amounting in the aggregate to about the sum of fourteen millions of dollars, and which indebtedness and liabilities said parties of the first part are desirous of funding and securing by the conveyance
377 of their estates and properties to said party of the second part as mortgagee in trust, as hereinafter provided, and which

conveyance to him as mortgagee in trust said party of the second part has agreed to and by signing these presents does accept; and

Whereas for this purpose and to this end said A. & W. Sprague Manufacturing Company have executed their sixteen thousand five hundred negotiable promissory notes, all bearing even date with these presents and made payable to the order of said A. & W. Sprague and by them indorsed, payable three years from January 1, 1874, with interest from January 1, 1874, payable semi-annually, at the rate of seven and three-tenths per centum per annum till said principal sum is paid, whether at of [or] after maturity, and all instalments of interest in arrear to bear interest at the rate aforesaid till paid, but reserving the right to pay said notes before maturity in instalments of not less than five per centum of the principal thereof at any time the semi-annual interest becomes payable, principal and interest payable at the place of business of said A. & W. Sprague Manufacturing Company, in said Providence, said notes being of the amounts and lettered and numbered as follows, to wit: Two thousand thereof for fifty dollars each, lettered A No. 1 to A No. 2000, both inclusive; three thousand thereof for one hundred dollars each, lettered B No. 1 to B No. 3000, both inclusive; three thousand thereof for two hundred dollars each, lettered C No. 1 to C No. 3000, both inclusive; three thousand thereof for five hundred dollars each, lettered D No. 1 to D No. 3000, both inclusive; four thousand thereof for one thousand dollars each, lettered E No. 1 to E. No. 4000, both inclusive, and fifteen hundred thereof for five thousand dollars each, lettered F No. 1 to F No. 1500, both inclusive, and all of which notes have been placed in the hands of said party of the second part to be by him used and applied to the payment or retiring of such of the present outstanding indebtedness and liabilities aforesaid as the holders thereof shall within nine months from the date of these presents bring in and surrender and discharge or agree to extend for the term and according to the provisions of said notes, said notes as so issued by said trustee to be countersigned by him;

378 And whereas the preservation of the manufacturing properties of said A. & W. Sprague Manufacturing Company and the best interests of the creditors require, to prevent great loss and shrinkage, that the business of the mills and print works shall in the meantime be continued:

Now, therefore, said parties of the first part, in consideration of the premises and of the trusts hereinafter declared, and in further consideration of one dollar to them paid by said party of the second part, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said party of the second part, his heirs, executors, administrators, and assigns, all the property, real, personal, and mixed, not exempt from attachment by law which the parties of the first part or any or either of them have and hold in the following city and towns in the State of Rhode Island, viz., the city of Providence, the towns of Cranston, Johnston, Coventry, East Greenwich, West Greenwich, South Kingston, Warwick, Pawtucket, Lincoln, North Providence, Cumberland, East Providence,

and North Kingston; in the following towns of the Commonwealth of Massachusetts, viz., Attleborough and Palmer; in the following counties of the State of Maine, viz., Somerset, Piscataquis, Franklin, Kennebec, Penobscot, and Aroostook; in the following counties of the State of New Hampshire, viz., Grafton, Coos, Carroll, and Belknap; in the towns of Richmond and Lexington, in the State of South Carolina; in the city of Washington, in the District of Columbia; in the following towns of the State of Connecticut, viz., Sterling, Sprague, Scotland, and Windham, including in what is known as the Baltic Mill property, in said State of Connecticut, 4 iron water-wheels, 4 rotary pumps, 3 openers, 20 lappers, 412 cards, 19 double heads, 6 doublers, 5 grinders, 19 railway heads and troughs, 30 drawing frames, 25 coarse speeders, 49 fine speeders, 275 spinning frames, 34 spoolers, 16 slasher-warpers, 4 slashers, 20 warpers, 12 dressers, 36 pairs mules, 1,973 looms, 1 boring machine, 1 upright drill, 2 iron planers, 8 turning engines, 1 circular saw, 1 vertical saw, one wood planer, 1 gear-cutter, 2 bolt-cutters, 1 run of grist-mill stones, 1 bolter for grist-mill, 1 corn-cracker, 1 steam
379 fire-engine, 3 gas retorts, and all the taps, dies, and tools appertaining to the machine and blacksmith's shops; and including in what is known as the Oneco property, in said State of Connecticut, 250 stone hammers, 750 drills, and the tools and apparatus used in quarrying and cutting stone; and including in what is known as the South Windham property the saws and tools in the saw-mill; and including the hay in barns and elsewhere in either of said towns of the State of Connecticut; and including, generally, within the foregoing description, the two homestead estates, the Washington and Cove street lot, the Dyer-street lot, the Dorrance-street lot, the Pine and Page street lot, the Peace-street lot, the Marine railway property, the lot on the corner of Hope and Waterman streets, the Fenner-avenue lot, the Martin-street property, the George, Pitman, and Ives street property, the Elmwood store property, and the Ninth-ward property, in the city of Providence; the Cranston Print Works property, with about eighteen hundred and seventy acres of land and improvements thereon, in the town of Cranston; the Natick Mills property, with about eight hundred and thirty acres of land and improvements thereon, and the Ladd farm, with about one hundred and one acres of land and improvements thereon, sometimes called the Coweset estate, in the town of Warwick; the Morgan Mill property, with about six hundred and twenty-five acres of land and improvements thereon, in the town of Johnston; the homestead estate in South Kingston, with about four hundred and twenty-eight acres of land and improvements thereon; the mill property in Augusta, Maine, with about four hundred acres of land and improvements thereon; the mill property in Palmer, Massachusetts, with about seven acres of land and improvements thereon; the estates in the city of Washington, with about six acres of land and improvements thereon; the property in the city of Columbia, in the State of South Carolina, with about four hundred acres of land and improvements thereon; and also all other the estate and property, real and personal, of every name and nature, not exempt

from attachment by law, wherever situate and by whatsoever muniments of titled evidenced, which any or either of the parties of the first part have or may be entitled to, in possession or action, reversion
380 or remainder; together also with all goods, stock, and supplies, manufactured, unmanufactured, and in process of manufacture, and all fixtures, machinery, tools, and other personal property of every kind which said A. & W. Sprague Manufacturing Company may at any time or from time to time hereafter have, either in lieu of or in addition to those now on hand, but excepting from this conveyance all shares of capital stock in any and every corporation, wherever located, belonging to any or either of the parties of the first part, the same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security to secure the performance of the conditions of this instrument:

To have and to hold said granted and bargained premises, with all the rights, privileges, and appurtenances thereof, unto and to the use of him, the said party of the second part, his heirs, executors, administrators, and assigns, in trust for the intents and purposes and with under, and subject to the powers and provisos hereafter contained, but subject, nevertheless, to the following conditions—that is to say, upon condition that if said parties of the first part or any or either of them, their heirs, executors, administrators, or assigns, or any person for them or in their behalf, shall well and truly pay or cause to be paid all and singular the debts and liabilities aforesaid which shall be brought in under these presents and remain outstanding, as hereinbefore provided, and all expenses and liabilities of every kind incurred in the execution of the trusts hereinafter created or declared, and all the notes aforesaid that shall be issued by the trustee aforesaid, together with the interest thereon, according to the tenor thereof, then this deed shall be and become void; otherwise shall remain in force.

And subject to the condition aforesaid, in trust for said party of the second part, and other the trustees or trustee under these presents for the time being, to stand seized and possessed of the said granted estates and premises, and until default shall be made in the performance of the conditions aforesaid or any part thereof, or breach shall be made of the covenants or agreements hereinafter contained on the part of said parties of the first part to be kept or performed, or until sale under the trusts hereinafter declared, or until
381 entry under the power in that behalf hereafter contained, to permit and suffer said parties of the first part to retain the possession and use of said granted premises:

Provided, and it shall be lawful for said trustees or trustee for the time being at any time or from time to time before such default or breach, and with or without previous entry, in their or his discretion, to sell at public or private sale any part or parts of said granted estates and property, and to execute and deliver such deed or deeds as may be necessary or proper to vest in the purchaser or purchasers thereof an absolute and indefeasible estate in fee simple therein, and to stand seized of all the purchase-moneys to arise and received

therefrom for the uses and purposes hereinafter declared respecting the same; and

Provided further, That said trustees or trustee for the time being may at any time or from time to time, before default or breach as well as after, enter upon said granted estates and property or any part or parts thereof, and take and assume the full and absolute possession and control of the same, and in their or his discretion to continue to run and operate or to close the mills or print works of said manufacturing company or any or either of them, as said trustees or trustee for the time being shall deem for the best interests of the creditors: and

Provided also, and it is hereby further declared, That in case default shall be made in payment of said notes hereby secured or any or either of them, or of the semi-annual interest due thereon, or breach shall be made of either of the covenants or ag reements herein contained on the part of said parties of the first part to be kept and performed, and such default or breach shall continue for the space of sixty days, then in such case the said trustees or trustee hereunder for the time being, in their or his discretion, may and upon the request in writing of the holders of one-fifth in amount of the notes then issued and outstanding under these presents said trustees or trustee for the time being shall from time to time thereafter, either before or after entry as aforesaid, sell, either together or in parcels, the estates and property aforesaid or any part or parts thereof at public or private sale, as said trustees or trustee shall think best,
382 first giving, in case of any auction sale under this or under any other provisions of this instrument, notice thereof by advertisement at least twice a week for four successive weeks in some public newspaper printed in said Providence, and such other notice as they or he may deem advisable, and upon sale thereof to execute and deliver such deed or deeds as may be necessary or proper to vest in the purchaser or purchasers thereof an absolute and indefeasible estate in fee simple therein.

And it is hereby declared that said trustees or trustee for the time being shall stand seized of all the purchase-moneys to arise and received from sales or otherwise under any of the trusts of these presents, to apply and appropriate the same—

First. To the payment of all expenses incident to such sale or sales, and of all insurance moneys, taxes, and other charges, if any, paid or incurred by them in respect of said trust estates, together with a reasonable compensation to said trustees or trustee for the time being for their or his own services, and reasonable counsel fees and all other charges and liabilities paid or incurred by them, either in carrying on the business or in the execution of any other of the trusts hereby created;

And, secondly, the residue of all moneys received by them under any of the trusts of this instrument from time to time to apply and appropriate ratably to the payment of the principal and interest of all the debts and liabilities aforesaid of said parties of the first part which shall be brought in under these presents and remain outstanding as aforesaid, and of all the notes that shall be issued by

said trustee and be outstanding under and secured by these presents, and although by their terms the same may not then have matured, accounting to said parties of the first part, respectively, their heirs, executors, administrators, or assigns, for any surplus, if any, that may remain after the full payment thereof.

And it is further declared that no purchaser under any or either of the foregoing trusts shall be under any obligation to inquire into the necessity or regularity of any sale thereunder, nor to see to the application of any of the purchase-moneys thereof, but that the receipt of the trustees or trustee for the time being to such purchaser or purchasers for such purchase-moneys shall be his or their full and effectual acquittance and discharge therefor; and if at any time said trustee, or any trustee to be appointed under these pres-
383 ents, shall be desirous of resigning and of being discharged from the trusts aforesaid, it shall be lawful for them or him so to do, and in such case or in case said trustee or any trustee to be appointed under these presents shall die or become incapable of acting in said trusts, it shall be lawful for the surviving or continuing trustees or trustee for the time being, by any writing or writings under their or his hands, to nominate and appoint, or in case at any time all the trustees for the time being shall resign together, then for the supreme court of the State of Rhode Island, sitting in equity, to appoint any other person or persons to be a trustee or trustees in the stead and place of him or them so dying, resigning, or becoming incapable of acting as aforesaid, and thereupon and as often as any such appointment shall be made all the trust estates and property then held under the trusts aforesaid shall, with all convenient speed, be so conveyed, assigned, and transferred as to vest the same in the surviving or continuing trustees or trustee, and such new trustees or trustee, or if there be no continuing trustee, then in such new trustees or trustee only, their or his heirs, executors, administrators, and assigns, to the same uses and upon the same trusts as are herein declared concerning the same; and every new trustee under these presents so appointed, or otherwise duly appointed by any court of competent jurisdiction, may immediately exercise any power or discretion herein granted in the same manner as though originally named as trustee herein, and although the trust estate be not then vested in him; and no trustee under these presents shall be answerable or accountable for any loss which may happen to said trust estate or property unless the same shall happen by his own neglect or default.

And the said parties of the first part, for themselves and for their respective heirs, executors, administrators, and assigns, do hereby covenant with the said party of the second part, his heirs, executors, administrators, and assigns, at any time or from time to time during the continuance of this security, to execute and deliver to the party of the second part or other the trustees or trustee under these presents for the time being, or to any purchaser under any of the foregoing trusts, such further conveyances or assurances of the estates or property hereby conveyed or intended to be con-
384 veyed or any part or parts thereof as said trustees or trustee

for the time being may reasonably require, and at all times during the continuance of this security, at their own cost and charges, to keep and maintain insurance, for the benefit of said party of the second part under these presents, upon the mills, buildings, machinery, and other insurable property hereby conveyed or intended to be conveyed, in such reasonable amounts and in such insurance companies as said trustees or trustee for the time being shall approve; also that the profits that shall hereafter accrue in the business of said manufacturing company shall from time to time be by said company paid over to said trustees or trustee for the time being, to be held and applied to any of the purposes aforesaid in the same manner as the other trust moneys under these presents; also to pay all taxes and assessments, rates, and charges of every nature that may be laid or levied upon or in respect of said granted premises, and in default thereof it shall be lawful for said trustees or trustee for the time being to effect such insurance and to pay said taxes, assessments, rates, and charges, and all sums paid therefor shall be a further lien upon said granted premises secured by these presents.

In testimony whereof said A. & W. Sprague Manufacturing Company have caused these presents to be signed and its corporate seal to be hereto affixed by said Amasa Sprague, its treasurer, for this purpose fully authorized, and said other parties of the first and second parts have hereunto set their hands and seals this said first day of November, A. D. eighteen hundred and seventy-three.

A. & W. SPRAGUE M'F'G CO.,
By AMASA SPRAGUE, *Treas.* [SEAL.]
(Signed) WILLIAM SPRAGUE. "
AMASA SPRAGUE. "
MARY SPRAGUE. "
FANNY SPRAGUE. "
A. & W. SPRAGUE. "
ZECHARIAH CHAFEE. "

Signed, sealed, and delivered in presence of—
THOS. A. DOYLE.
F. W. LATHAM.
GEORGE HARRIS.

385 THE STATE OF RHODE ISLAND, ETC., } *ss:*
City and County of Providence, }

Be it known that in said city of Providence, on this first day of December, A. D. 1873, before me, Henry Martin, a justice of the peace for the said city of Providence, a notary public for said State of Rhode Island, and a commissioner for the State of New York, residing in said city of Providence, personally appeared Amasa Sprague, Fanny Sprague, and Mary Sprague, who are personally known to me to be the same persons described in and who signed, sealed, and executed the foregoing instrument, and they then and there severally acknowledged to me that they signed, sealed, executed, and delivered the said instrument as and that the same is

their free and voluntary act and deed for the uses and purposes herein mentioned and expressed; and at the same time and place the said Amasa Sprague, also personally known to me to be the same person who executed the foregoing instrument as treasurer, in his capacity as treasurer of the A. & W. Sprague Manufacturing Company, also acknowledged to me that he signed, sealed, executed, and delivered the said instrument as and that the same is his free and voluntary act and deed as such treasurer, and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company for the uses and purposes therein mentioned and expressed.

In testimony whereof I have hereunto set my hand and official seals, at said city of Providence, on this said first day of December, A. D. 1873.

(Signed) HENRY MARTIN,
Justice of the Peace, Notary Public, and Commissioner for the State of New York.

STATE OF RHODE ISLAND, } ss:
City and County of Providence, }

Be it known that in the city of Providence, on this sixth day of December, A. D. 1873, before me, Henry Martin, a justice of the peace for said city of Providence, a notary public for said
386 State of Rhode Island, and a commissioner for the State of New York, residing in said Providence, personally appeared William Sprague, to me personally known, and he then and there acknowledged to me that he signed, sealed, and executed and delivered the foregoing instrument as his free and voluntary act and deed.

In testimony whereof, I have hereunto set my hand and seals, at said city of Providence, on this eighth day of December, A. D. 1873.

[L. S.] [L. S.] HENRY MARTIN,
Justice of the Peace, Notary Public, and Commissioner for the State of New York.

EXHIBIT 4.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island and transacting business in the city of Providence, of the first part, and Zechariah Chafee, of said Providence, of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Company is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating its estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W. Sprague Manufacturing Company, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar

to it paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all our right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day
387 of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, and mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims of creditors against us, the A. & W. Sprague Manufacturing Company, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same, under the provisions of said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interest of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise ratably, the obligations to our creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interest of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

388 And the said party of the second part doth hereby accept said trust and doth in consideration thereof covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof said A. & W. Sprague Manufacturing Company has caused these presents to be signed and its corporate seal to be hereto affixed by Amasa Sprague, its treasurer, for this purpose

fully authorized, and said Zechariah Chafee has hereto set his hand and seal this sixth day of April, eighteen hundred and seventy-four.

A. & W. SPRAGUE M'F'G CO.,
Per AMASA SPRAGUE, *Tr.*
ZECHARIAH CHAFEE.

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

STATE OF RHODE ISLAND, ETC., } ss:
City and County of Providence, }

Be it known that in said city of Providence, this seventh day of April, A. D. 1874, before me, Charles Selden, a justice of the peace for the said city of Providence and a notary public for said State of Rhode Island, residing in said city of Providence, personally appeared Amasa Sprague, personally known to me to be the same person who executed the aforegoing instrument as treasurer, and in his capacity as treasurer acknowledged to me that he signed, sealed, executed, and delivered this said instrument as and that the same is his free and voluntary act and deed as such treasurer and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company, for the uses and purposes therein mentioned and expressed.

In testimony whereof I have hereunto set my hand and official seal, at said city of Providence, on this said seventh day of April, A. D. 1874.

CHAS. SELDEN,
Justice of the Peace and Notary Public.

389 EXHIBIT 5.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague, of Cranston, county of Providence, State of Rhode Island, of the first part, and Zechariah Chafee, of Providence, county of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said Amasa Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said Amasa Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all his right, title, and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any

and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against the said Amasa Sprague provided for in said trust deed of mortgage of Nov. 1, 1873, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same,
390 under the provisions of said deed of mortgage dated Nov. 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other claims. And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors, and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works, or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him, or otherwise, he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof I have hereunto set my hand and seal this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

391 THE STATE OF RHODE ISLAND, }
County of Providence, } *ss.*:

In Providence, this seventh day of April, A. D. 1874, then Amasa

Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—

[L. S.] CHARLES SELDEN,
Notary Public.

Recorded May 8, 1874, at 9.30 a. m.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office in Book No. 248, page 311.
Attest: G. A. WILLIAMSON,
Recorder of Deeds.

EXHIBIT 6.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague, of Cranston, county of Providence and State of Rhode Island, and William Sprague, of South Kingston, county of Washington and State of Rhode Island, copartners as A. & W. Sprague, of the first part, and Zechariah Chafee, of the city of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said A. & W. Sprague are now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and are desirous of appropriating their estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W.
392 Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to them paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all their right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantors and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against us (A. & W. Sprague) which have or shall within nine months from the first day of November, A. D. 1873,

be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same under the provisions of the said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to our creditors within a reasonable time.

And the said trustee is further authorized to run said mills
393 and print works or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid, and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof we have hereunto set our hands and seals this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
WILLIAM SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this sixth day of April, A. D. 1874, then Amasa Sprague William Sprague, and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—
[L. S.] CHARLES SELDEN,
Notary Public.

Recorded May 8, 1874, at 9.30 a. m.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

394 OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office in Book No. 248, page 313.
Attest: G. A. WILLIAMSON,
Recorder of Deeds.

EXHIBIT 7.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-five, by and between William Sprague, of South Kingston, county of Washington, State of Rhode Island, of the first part, and Zechariah Chafee, of Providence, of the second part, witnesseth:

Whereas the said William Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said William Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all his right, title, and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee,
395 his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against the said William Sprague provided for in said trust deed of mortgage of Nov. 1, 1873, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time for a part or the whole of the same, under the provisions of said deed of mortgage dated Nov. 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interest of the creditors, and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be,

consulting the best interest of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time.

And the said trustee is further authorized to run said mills and print works or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid, and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be charged to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

396 In testimony whereof I have hereunto set my hand and seal this sixth day of April, one thousand eight hundred and seventy-four.

WILLIAM SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. [L. S.]

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } *ss:*
County of Providence, }

In Providence, this sixth day of April, A. D. 1874, then William Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—
[L. S.] CHARLES SELDEN,
Notary Public.

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, L. P. Williams, a notary public for said District and county, do hereby certify that William Sprague, party to a certain deed bearing date of the sixth day of April, A. D. 1874, and hereto annexed, personally appeared before me in the county aforesaid, the said William Sprague being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 15th day of April, A. D. 1874.

[L. S.] L. P. WILLIAMS,
Notary Public.

Recorded May 11th, 1874, at 10.15 a. m.
Witness: G. A. WILLIAMSON,
Recorder of Deeds.

397 OFFICE OF RECORDER OF DEEDS,
PROVIDENCE, R. I., *Nov.* 29, 1880.

A true copy of record in this office in Book No. 248, page 315.

Attest: G. A. WILLIAMSON,
Recorder of Deeds.

Amendment to Answer of Zechariah Chafee. (*Filed June* 20, 1883.)

Amendment to the answer of Zechariah Chafee, one of the respondents in the above cause, under stipulation dated June 8, 1883, and filed herewith.

And this respondent, further answering, says that since the time of filing his answer in the above-entitled cause he has been informed and believes, and thereupon avers and charges, that the said complainant purchased the said "Canonchet" estate at the request and in the interest of the said defendant, William Sprague, and that the said complainant was furnished by the said William Sprague with the sum of $3,300, or thereabouts, with the intention that the said complainant should therewith pay such sum as might be necessary for a first cash payment in accordance with said terms of sale—Exhibit A, annexed to said bill—which amounted, as stated in said bill, to the sum of $3,112.50, and should retain the balance thereof to pay any legal expenses that might be incurred; that the said complainant made said purchase and said first payment well knowing, as stated in said answer of this respondent, that the said William Sprague intended to hold said estate forcibly against any purchaser and for the purpose of enabling the said William Sprague so to hold said estate, and with the intention and for the purpose of involving the title to said estate in litigation for an indefinite period of time; and this respondent is informed and believes, and thereupon avers and charges, that all that has been done by said complainant
398 in the purchase of said estate, the payment of said first cash payment of five per cent., and the bringing of this suit has been done in accordance with an understanding and agreement entered into by and between said William Sprague and said complainant, and that said complainant is now prosecuting this said suit in collusion with said William Sprague and for the purpose of hindering and delaying this respondent in obtaining possession of said estate and otherwise disposing of said property, and that neither said complainant nor said William Sprague intended to make any further payment for said estate nor to carry out said contract of sale in good faith, but only did said acts in the interest of said William Sprague and to enable him to hold possession of said property for an indefinite period of time and for the purposes above set forth.

And this respondent is advised that all said acts are collusive, fraudulent, and void as against this respondent, and that said com-

plainant has thereby forfeited said first payment of $3,112.50, and has no right to any relief under this bill.

ZECHARIAH CHAFEE.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHARLES HART,
B. F. THURSTON,
Solicitors for Respondent.

UNITED STATES OF AMERICA, } ss:
District of Rhode Island, }

In the city of Providence, in said district, this twentieth day of June, A. D. 1883, personally appeared Zechariah Chafee, subscriber of the aforegoing, and made oath that the statements made in the aforegoing as of his own knowledge are true, and those made therein as of his information and belief he verily believes to be true.

Before me—

[SEAL.] C. FRANK PARKHURST,
Notary Public.

399 *Agreement to File Answer.* (*Filed June* 20, 1883.)

Circuit Court of the United States, District of Rhode Island, *ss:*

FRANCIS D. MOULTON }
vs. } In Equity. No. —.
L. CHAFEE *et als.* }

In the above-entitled cause it is stipulated and agreed that the defendant, Z. Chafee, may amend his answer at any time on or before the July rule day (July 2, 1883), copy of answer as amended to be furnished to us.

A. & A. D. PAYNE,
Solicitors for Complainant.

Providence, June 8, 1883.

Answer of William Sprague. (*Filed Nov.* 15, 1882.)

The answer of William Sprague to the above-entitled bill of complaint.

This defendant, saving and reserving unto himself all benefit and advantage of exception to the many errors, inconsistencies, and insufficiencies in said bill of complaint contained, for answer thereunto or to so much or such part thereof as they are [he is] advised is material and necessary for him to make answer unto, answering, says—

First. This defendant admits all the matters and facts set forth in the first paragraph in complainant's said bill of complaint.

Second. This defendant neither admits nor denies the facts set forth in the second paragraph in complainant's said bill of com-

plaint, but calls upon the complainant to make full proof of the same.

Third. This defendant neither admits nor denies the facts set forth in the third paragraph of the complainant's said bill, but calls
400 upon the complainant to make full proof of the same, excepting only that part of the said third paragraph wherein the complainant avers "that then and there the said William Sprague hereinbefore named was in possession of said property and refused to deliver up the same to the said Chafee, claiming to be a trustee, and so the said Chafee was unable to deliver possession of said property to your orator," which this defendant admits to be true.

Fourth. And this defendant, further answering, says that as to the matters and facts set forth in the fourth paragraph in complainant's said bill, to wit, "that he is advised and believes, and therefore avers, that the said William Sprague claims to hold possession of said property by a good and valid title," and asking that the said William Sprague in his answer may be required to set out and disclose fully what the nature of the title is by which he claims the right to the possession of said property, and for answer thereto saith:

1. That Weeden H. Berry, deputy sheriff, under and by virtue of an execution issued from the supreme court — Washington county, in favor of the Niantic Bank of Westerly against John Thompson, conveyed to the said Niantic Bank a portion of the premises described in the complainant's bill of complaint by sheriff's deed dated the first day of May, 1862, which deed is recorded in the land records of South Kingston, in Deed Book No. 20, pp. 581 and 582, a copy of which deed this defendant asks leave to produce in court at the trial of this cause, and that the same may be read and used as a part of this answer.

2. That the said Niantic Bank executed a conveyance of the property described in the said deed to the A. & W. Sprague Manufacturing Company by deed dated Oct. 3, 1866, which deed is also recorded in the land records of South Kingston, in Deed Book 22, p. 237.

3. That Bowdoin Hazzard, of South Kingston, executed a conveyance of another portion of the premises described in the complainant's bill to Amasa Sprague by deed dated Dec. 19, 1864, which deed is recorded in the land records of South Kingston, in Deed Book No. 21, p. 535.

4. That Benjamin Macomber, of South Kingston, executed a conveyance of another portion of the premises described in
401 the complainant's bill to William Sprague by deed dated Sept. 13, 1869, which deed is also recorded in the land records of South Kingston, in Deed Book 23, p. 69; copies of all of which deeds this defendant asks leave to produce in court at the trial of this cause, and that the same may be read and used as a part of this answer.

And this defendant says that the estates and premises described in the deeds above referred to comprise all the premises known as the Canonchet estate and all the estate and premises described and set forth in the complainant's said bill of complaint.

Fifth. And this defendant, further answering, saith that he and those under whom he derives his title has [have] been for more than twenty years, to wit, from the first day of May, 1862, up to the present time, in the uninterrupted, quiet, peaceable, and actual seizin and possession of the estates and premises described and set forth in the complainant's bill, claiming the same as his and their proper, sole, and rightful estate in fee simple, and still is in possession of the same as his dwelling-house and homestead.

Sixth. This defendant, further answering, saith that prior to Nov. 1, 1873, the A. & W. Sprague Manufacturing Company became embarrassed and was unable to meet its financial obligations. The company called a meeting of its creditors, at which meeting a committee was appointed to examine into and report upon the financial condition of the company. After a careful and thorough examination the committee made report, a copy of which report this defendant asks leave to produce in court to be read and used in the trial of this cause as a part of this answer, which report, at a meeting subsequently called by the said committee, to wit, about Nov. 1, 1873, was adopted and ratified by the creditors. In compliance with the wish of their said creditors and the said report of the said committee, the said A. & W. Sprague Manufacturing Company, by Amasa Sprague, its treasurer, A. & W. Sprague Copartnership Company, Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague signed the deed commonly known as the trust mortgage deed. The said deed so signed was in manner, form, and substance as was approved and ratified by the creditors in their said meeting and as suggested by the said committee in their said report;

402 that on the 29th of November, 1873, the said trustees addressed a note to William J. King, Esq., chairman of the creditors' committee, refusing to accept the position of trustees under the said deed, a copy of which note this defendant asks leave to produce in court and to be read and used as a part of this answer in the trial of this cause.

And this defendant, further answering, saith that he was at that time and is now a large shareholder in the A. & W. Sprague Manufacturing Company; that at the time of the writing of the said note by the said trustees he was in Washington and knew nothing of the refusal of the said parties to accept the trusts under the said deed until some days after, when the fact was telegraphed to him at Washington.

And this defendant, further answering, saith that the said Amasa Sprague, Fanny Sprague, and Mary Sprague, under the pressure and threats of their creditors and the advice of counsel, acknowledged the deed which has been signed by them and placed in the hands of the trustees referred to and delivered the same to the said Chafee; which said deed is now in the hands of the said Chafee, and which this defendant craves may be produced by him to be used in the trial of this cause.

And this defendant, further answering, saith the deed to the said Chafee was executed by the said Amasa Sprague, as the treasurer of

said company, and by the said Fanny Sprague and Mary Sprague without his knowledge, approval, and consent.

And this defendant, further answering, says that the said trust mortgage deed is void—

1. Because the said deed was neither made nor ratified by any lawful vote of the said company.

2. Because the stockholders of the said company were not notified of the holding of nor to attend any meeting of the said company called to consider the question of making said deed or the ratification thereof in accordance with the by-laws of the company.

3. Because the president of the company is the person authorized by the by-laws of the said company to execute all deeds and conveyances of the real property of the company.

4. Because the change of the by-laws of the company au-
403 thorizing the treasurer to execute all deeds and conveyances of the real property of the company was not authorized nor ratified by any lawful vote of the company.

5. Because the stockholders of said company were not notified of the holding of or to attend any meeting of the company called to consider the question of changing the by-laws of the company, so as to authorize the treasurer to execute deeds and conveyances of the real property of the company in the place of the president, as provided by the by-laws of the company, and all the said stockholders were not present at said meeting.

6. Because the said deed was made to protect the estate from the operation of the bankrupt law of the United States.

7. Because the said deed was made to hinder, delay, and defraud creditors.

8. Because the said deed was not the free and voluntary act and deed of the several grantors.

9. Because the premises set out and described in the complainant's said bill were not set out and described in the said trust mortgage deed with sufficient certainty, as required by law, to convey the said estate claimed to be so conveyed to the said Chafee.

10. Because the said deed was made in violation of the general policy of the law.

Seventh. And this defendant, further answering, says that prior to April 6, 1874, certain of the creditors of the said A. & W. Sprague Manufacturing Company commenced proceedings in bankruptcy against the said estate, which proceedings in bankruptcy were withdrawn through certain considerations paid or secured to them by the said Chafee, and that as a part of the said consideration the said Chafee and his counsel induced and compelled, by threats and persuasion, the said Amasa Sprague, as treasurer of the said A. & W. Sprague Manufacturing Company, A. & W. Sprague Copartnership Company, Amasa Sprague, and William Sprague to execute deeds of assignment of all their property to the said Chafee, in trust, which deeds of assignment are now in the hands of the said Chafee, and which this defendant craves may be produced in court at the trial of said cause.

404 And this defendant, further answering, says that the deeds of assignment so executed by the A. & W. Sprague Manufacturing Company, as well as their individual and copartnership deeds so executed, are void—

1. Because the said deed was not made nor ratified by any lawful vote of the A. & W. Sprague Manufacturing Company.

2. Because the stockholders of said company were not notified of the holding of or to attend any meeting of the said company called to consider the question of making said deed or the ratification thereof, in accordance with the by-laws of the company.

3. Because the president of the said company is the person authorized by the by-laws of the said company to execute all deeds and conveyances of the real property of the company.

4. Because the change of the by-laws authorizing the treasurer to execute all deeds and conveyances of the real property of the company was not authorized nor ratified by vote of the company.

5. Because the stockholders of said company were not notified of the holding of or to attend any meeting of the said company called to consider the question of changing the by-laws of the company so as to authorize the treasurer of the company to execute the deeds and conveyances of the real property of the company in place of the president, as provided by the by-laws.

6. Because the said deed was made to protect the estate from the operation of the bankrupt law of the United States.

7. Because it was made to hinder, delay, and defraud creditors.

8. Because it was not the free act and deed of the several grantors.

9. Because the premises set out and described in said bill was not set out and described in the said trust mortgage deed with sufficient certainty as required by law to convey the said estate claimed to be so conveyed to the said Chafee.

10. Because the said deed was made in violation of the general policy of the law.

Eighth. And this defendant, further answering, says that subsequent to the execution of the said trust deed and assignments the National Bank of Commerce of New York, a banking corporation created under the authority of the United States, a creditor
405 of the A. & W. Sprague Manufacturing Company, did, by a process of the United States circuit court for the first circuit in the district of Rhode Island, attach all the real property of the said company, including the estate described in the complainant's bill, and obtained a judgment thereon against the said company. An execution issued thereon from said court, upon which a levy was made upon all said property, and the same was sold by the marshal of said district to the said National Bank of Commerce; all of which by the record of proceedings of said court now remaining of record will more fully appear, to which this defendant takes leave for greater certainty to refer.

And this defendant further saith that said National Bank of Commerce afterward sold the said estate, including the estate known as Canonchet, to three trustees in trust for the use and benefit of the estate pretended to be held by the said Chafee in trust, a copy of

which deeds this defendant asks leave to produce in court in the trial of this cause.

And this defendant, answering, says that all said proceedings, acts, and doings of said National Bank of Commerce in bringing said suit, obtaining said judgment and execution thereon, and levying the same were void and of none effect, because said court had no jurisdiction of the process of the parties or of the subject-matter of said suit.

Ninth. And this defendant, further answering, says that the notes issued by the said A. & W. Sprague Manufacturing Company and placed in the hands of the said Chafee, to secure the payment of which the said property was placed in trust, were not issued by the said Chafee in accordance with the terms and provisions of the said trust mortgage deed; that this was known to the persons who accepted the said notes from the said Chafee, and that the said A. & W. Sprague Manufacturing Company are not bound thereby nor liable to the holders thereof for the amounts claimed to be due thereon.

Tenth. And this defendant, further answering, says that at the time of making the said trust mortgage deed the said Chafee took possession and control of well-nigh all the estates and property not only of the A. & W. Sprague Manufacturing Company, but
406 also of A. & W. Sprague Copartnership Company, Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague, amounting in value to well-nigh three times more than the entire indebtedness of the said company, copartnership and individuals, as appears by the report made by the committee appointed for that purpose and above referred to; and the said creditors, well knowing the same, have permitted, suffered, and allowed the said Chafee to sell, dispose of, and squander, as well in the mangement of the said estate as otherwise, more than enough of the property and estates which came into his hands under the said trust to pay the entire indebtedness of the company, copartnership and individuals who signed the said trust deed, before his pretended sale of Canonchet without his applying the same to the payment of the claims of the said creditors, and that during the whole of this time the said creditors have not compelled the said Chafee to furnish bond for the faithful performance of the trusts imposed upon him by the acceptance of the said trust deed, as it was proper and right they should have done. Wherefore the said Chafee and the said creditors are estopped in equity and good conscience from any further sale and disposition of the said trust estate to pay their said pretended claims.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct,

and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM SPRAGUE.

A. B. PATTON,
J. B. KIMBALL,
Solicitors for W. S.
R. A. PRYOR,
B. F. BUTLER,
Of Counsel.

407 UNITED STATES OF AMERICA, } ss:
Rhode Island District, Providence, }

In the city of Providence, on this fifteenth day of November, A. D. 1882, before me, a notary public duly commissioned in and for the State of Rhode Island, personally appeared William Sprague, subscriber to the foregoing answer, and made oath that the statements made in said answer as of his own knowledge are true, and those made therein as of his information and belief he verily believes to be true.

Witness my hand and seal, at said Providence, in said district, the day and year aforesaid.

ANDREW B. PATTON,
Notary Public.

Amendment to Answer of William Sprague. (*Filed Feb.* 10, 1883.)

The defendant, William Sprague, comes and moves the court for leave to amend his answer filed in the above-entitled cause by inserting the following allegations at the close of the eighth paragraph of said answer:

First. That subsequent to the levy of the National Bank of Commerce of New York the Franklin Institution for Savings, a banking institution doing business under and in accordance with the laws of Rhode Island, a creditor of the said A. & W. Manufacturing Company, commenced suit against said company in the supreme court of the State of Rhode Island, obtained judgment against said company, levied upon and sold under an execution issuing out of said court in the said suit all the real property of the said company lying in the said State of Rhode Island, including the estate known as Canonchet, described in complainant's bill of complaint, to Winthrop De Wolf, receiver of the said Franklin Institution for Savings, all of which will more fully appear from the records of said case in said court, to which this defendant takes leave for greater certainty to refer.

Second. And this defendant, further answering, says that
408 on the — day of December, 1882, the said Winthrop De Wolf, receiver, deceased, and that on the thirtieth day of December, 1882, Thomas C. Greene, Esq., was by decree of the supreme court of the State of Rhode Island, sitting in Providence, within and for the county of Providence, appointed receiver of the said Franklin

Institution in the place and stead of the said Winthrop De Wolf, deceased, and that the title to the said property sold under the said execution is now by decree of the said court vested in the said Thomas C. Greene, receiver, if any title was conveyed thereto by the sale under the said levy and execution.

But this defendant says that all said proceedings, acts, and doings of said Francklyn Institution for Savings in bringing said suit, obtaining said judgment and execution thereon, and levying the same are void because of the irregularity and non-compliance with the laws and statutes of the State in making said levy and sale.

And this defendant further says that on the twenty-fourth day of August, 1882, one Evan Randolph, a citizen of the State of Pennsylvania, a creditor of Hoyt, Spragues & Co., of which firm this defendant, said William Sprague, is and was a member, brought suit in the circuit court of the United States against the surviving members of the said firm and made levy by a writ in the nature of a writ of mesne process upon all the right, title, and interest of this defendant in the estate known as Canonchet, the same estate described in the complainant's said bill, and that the said levy is still on the said property, but no sale has been made thereunder.

A. B. PATTON,
Solicitor for William Sprague.

Answers of James M. Kimball et als. (*Filed June* 20, 1883.)

The joint and several answer of James M. Kimball, Edward H. Robinson, and Benjamin A. Jackson to the above-entitled bill of complaint.

These defendants, saving and reserving unto themselves
409 all benefit and advantage of exception to the many errors, inconsistencies, and insufficiencies in said bill of complaint contained, for answer thereunto or to so much or such part thereof as they are advised is material and necessary for them to make answer unto, answering, say:

First. These defendants admit that they are trustees, as set forth in said bill of complaint, and further say that they are such trustees under a certain deed of trust to them from the National Bank of Commerce, in New York, bearing date the fourteenth day of February, A. D. 1881, a copy of which said deed is hereunto annexed, marked "Exhibit A," and made a part of this answer; that under said deed they do claim title to the estate in said bill of complaint described, known as "Canonchet."

Second. And these defendants, further answering, say that they have read the "third" clause of the "fourth" paragraph of the answer of Zechariah Chafee, one of the defendants in the above-entitled cause, and that they make the same a part of this answer as if fully recited herein, and further say that they are now ready and have been ready and willing at any time since said sale to make conveyance of all their right, title, and interest in and to the said property described in said bill of complaint, known as "Canonchet,"

to the said Francis D. Moulton, upon his compliance with the terms of said sale, as set out in said bill, and they believe that this fact was openly stated at said sale; was then and ever since has been known to said complainant, as stated in said Chafee's answer.

And the said defendants pray to be hence dismissed with their lawful costs and charges in this behalf most wrongfully sustained.

JAMES M. KIMBALL.
EDWARD H. ROBINSON.
BENJAMIN A. JACKSON.

C. FRANK PARKHURST,
JAMES TILLINGHAST,
CHAS. HART,
B. F. THURSTON,
Solicitors and of Counsel for Respondents.

410 EXHIBITS.

EXHIBIT A.

Know all men by these presents that the National Bank of Commerce, in New York, a corporation established under the laws of the United States and located and doing business in the city of New York, in the county and State of New York, for and in consideration of the sum of one hundred thousand dollars ($100,000) to it paid by James M. Kimball, Edward H. Robinson, and Benjamin A. Jackson, all of Providence, in the county of Providence and State of Rhode Island, the receipt whereof is hereby acknowledged, has remised, released, and forever quitclaimed, and by these presents does remise, release, and forever quitclaim, unto them, the said James M. Kimball, Edward H. Robinson, and Benjamin A. Jackson, as joint tenants, their heirs and assigns forever, the following-described lots or parcels of land, with all the buildings and improvements thereon, situated in the city of Providence, in the county of Providence and State of Rhode Island, namely:

The Washington and Carr street lot, so called, delineated on plat No. 20, made for the use of the assessors of taxes of the city of Providence, as lot No. forty-two (42), and is the same land conveyed to this grantor by deed of James H. Coggeshall, U. S. marshal, dated September 11, 1879, and recorded in the office of the recorder of deeds, in said Providence, in Deed Book No. 303, at page 527.

Also a certain tract comprising three lots of land, delineated as lots numbered one hundred and seventy-three (173), one hundred and seventy-five (175), and one hundred and ninety-six (196), on plat No. 55, made for the use of said assessors, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said recorder's office in Deed Book No. 305, at page 302.

411 Also the Dyer-street lot, so called, comprising the lots delineated as lots numbered two hundred and forty-nine (249), two hundred and fifty (250), and two hundred and fifty-one (251),

on plat No. 20, made for the use of said assessors, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said recorder's office in Deed Book No. 303, at page 529.

Also a certain lot of land on Eddy street, delineated as lot numbered eight hundred and thirteen (813), on plat No. 54, made for the use of said assessors, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said recorder's office in Deed Book No. 305, at page 304.

Also the Pine and Page street lot, so called, delineated as lot numbered three hundred and twenty-eight (328), on plat No. 20, made for the use of said assessors, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said recorder's office in Deed Book No. 305, at page 306.

Also the Dorrance-street lots, so called, comprising the lots delineated as lots numbered one hundred and ninety-two (192), one hundred and ninety-three (193), one hundred and ninety-four (194), and two hundred and ninety-two (292), on plat No. 20, made for the use of said assessors, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said recorder's office in Deed Book No. 303, at page 531.

Also a certain lot of land situated on India street, delineated as lot numbered 69, on plat No. 18, made for the use of said assessors, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said recorder's office in Deed Book No. 303, at page 533.

Also the Elmwood store property (so called), being a certain lot of land on Greenwich street, comprising lots delineated as lots numbered four hundred and forty-six (446), five hundred and ninety-seven (597), six hundred and nineteen (619), six hundred and twenty (620), six hundred and twenty-one (621), six hundred
412 and twenty-two (622), six hundred and twenty-three (623), six hundred and twenty-four (624), on plat No. 30, made for the use of said assessors, being the same lots of land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said recorder's office in Deed Book No. 305, at page 308.

Also the Fenner-avenue lots, so called, delineated as lot numbered one (1), on plat No. 61, made for the use of said assessors, together with all the rights appurtenant thereto, in the land covered by the waters of Mashapaug pond, said lands being the same conveyed to this grantor by deed of said U. S. marshal, dated Sept. 11, 1879, and recorded in said recorder's office in Deed Book No. 305, at page 311.

Also the homestead estate of Mary Sprague, in Young Orchard, so called, being the same lot of land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said recorder's office in Deed Book No. 303, at page 536.

Also the homestead estate of Fanny Sprague, in Young Orchard, so called, being the same lot of land conveyed to this grantor by

deed of said U. S. marshal, dated September 11, 1879, and recorded in said recorder's office in Deed Book No. 305, at page 313.

Also the following-described tracts or parcels of land, with the buildings and improvements thereon, situated in the town of Cranston, in said county of Providence, namely:

The Cranston Print Works estate and village, comprising, besides the original Cranston Print Works estate, part of the Bates Harris homestead farm, part of the Nathaniel Sprague lot, part of the Sally Ann Smith purchase, and the Stokes lot, so called, being the same parcel of land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in the town clerk's office, in said Cranston, in Deed Book No. 61, at pages 507, 508, 509, and 510.

Also a certain parcel of land known as the Narragansett Park plat, including the Narragansett park and adjacent land, being the same parcel of land conveyed to this grantor by deed of said
413 U. S. marshal, dated September 11, 1879, and recorded in said Cranston town clerk's office in Deed Book No. 61, at page 510.

Also a certain parcel of land comprising the several estates known as the Stone farm, the Oldfield Wood lot, the Hill farm, the Milk farm, and Batchelder lot, being the same lands conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Cranston town clerk's office, Deed Book No. 61, at page 512.

Also a certain parcel of land known as the Sally Ann Smith purchase, excepting the portion thereof hereinbefore conveyed, being the same parcel or tract of land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Cranston town clerk's office in Deed Book No. 61, at page 515.

Also a certain parcel of land comprising the estates known as the Abner Sprague farm and the Larkin lot, being the same lands conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Cranston town clerk's office in Deed Book No. 61, at page 517.

Also a certain parcel of land comprising the several estates known as the Howard farm, the Benoni Harris farm, the Thornton lot, and the Eleanor Harris lot, being the same parcel or tract of land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Cranston town clerk's office in Deed Book No. 61, at page 520.

Also the Knowles Wood lot, so called, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Cranston town clerk's office in Deed Book No. 61, at pages 522, 523, and 524.

Also a certain parcel of land known as the Congdon Wood lot, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Cranston town clerk's office in Deed Book No. 61, at pages 525 and 526.

Also the Rivulet farm, so called, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11,

1879, and recorded in said Cranston town clerk's office in Deed Book No. 61, at pages 527, 528, and 529.

414 Also a certain parcel of land comprising the two estates known as the Rodney Dyer purchase and the Fanny Potter purchase, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Cranston town clerk's office in Deed Book No. 61, at pages 529, 530, and 531.

Also all tracts and parcels of land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Cranston town clerk's office in Deed Book No. 61, at pages 531, 532, and 533.

Also the following-described tracts and parcels of land, with the buildings and improvements thereon, situated in the town of Warwick, in the county of Kent and State of Rhode Island, namely:

A certain tract or parcel of land known as the Natick estate, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in the Warwick land records, in Deed Book E, at page 340.

Also a certain parcel of land known as the Sprague Homestead estate, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Warwick land records, in Deed Book E, at page 345.

Also the Littlefield farm, so called, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Warwick land records, in Deed Book E, at page 350.

Also the Pettaconsett farm, so called, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Warwick land records, in Deed Book E, at page 347.

Also a certain tract of land comprising the estate known as the Ladd farm and Jonathan Pierce purchase, being the same lands conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Warwick land records, in Deed Book E, at page 357.

Also a certain tract of land lying between Greenwich and Coweset Bay and the easterly line of the highway leading from Ap-

415 ponaug to East Greenwich, being the same land conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Warwick land records, in Deed Book E, at page 354.

Also all parcels or tracts of land situated in the town of Warwick conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in said Warwick land records, in Deed Book E, at page 353.

Also the tract or parcel of land situated in the town of South Kingston, in the county of Washington and State of Rhode Island, commonly called Canonchet, and containing about four hundred and twenty-eight acres, together with the mansion house, barns, stables, outhouses, and other improvements thereon, being the same

lands conveyed to this grantor by deed of said U. S. marshal, dated September 11, 1879, and recorded in the town clerk's office, in said South Kingston, in Deed Book No. 27, at page 64, reference being had to all said deeds of said James H. Coggeshall, U. S. marshal, recorded as aforesaid in the city of Providence and in the towns of Cranston, Warwick, and South Kingston, for fuller description of the lands hereby conveyed:

To have and to hold the same, with all the rights, privileges, and appurtenances thereto appertaining, to them, the said James M. Kimball, Edward H. Robinson, and Benjamin A. Jackson, as joint tenants, their heirs and assigns forever, in trust to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the notes of the A. & W. Sprague Manufacturing Company, dated November 1, 1873, issued under and secured by the conveyance of said date from the A. & W. Sprague Manufacturing Company and others to Zechariah Chafee.

Secondly. The residue of said proceeds to apply to the payment in full, if sufficient, otherwise ratably, of all other debts of the said A. & W. Sprague Manufacturing Company which were contracted prior to the sixth day of April, 1874.

And the aforenamed National Bank of Commerce of New York, for itself and for its successors, covenants with the said James
416 M. Kimball, Edward H. Robinson, and Benjamin A. Jackson, their heirs and assigns, that it will warrant and defend the aforedescribed lands to the said James M. Kimball, Edward H. Robinson, and Benjamin A. Jackson, their heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under it, said National Bank of Commerce, in New York.

In testimony whereof the said National Bank of Commerce, in New York, has hereunto caused its name to be subscribed and its corporate seal to be affixed by Henry F. Vial, its president and agent, in this behalf lawfully authorized, this fourteenth day of February, in the year of our Lord one thousand eight hundred and eighty-one.

NATIONAL BANK — COMMERCE, [L. S.]
IN NEW YORK,
By HENRY F. VIAL, *President.*

Signed, sealed, and delivered in presence of—
N. PENDLETON SCHENK.

STATE OF NEW YORK, }
County of New York, } *ss:*

In the city of New York, in said county and State, on this fourteenth day of February, A. D. 1881, the above-named Henry F. Vial, president of the National Bank of Commerce, in New York, personally appeared before me and acknowledged the foregoing instrument, by him signed in the name of and in behalf of said bank, to be his

said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

A. & A. D. PAYNE,
Complainant's Solicitors.

Replication to Answer of J. M. Kimball et al. (*Filed by Agreement May* 28, 1884.)

Complainant's replication to the answer of Edward H. Robinson, James M. Kimball, and B. A. Jackson, claiming to be trustees, etc.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be certain, true, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied
420 unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By his solicitors, A. & A. D. PAYNE.

Decree upon Demurrer of T. C. Greene, Receiver, etc. (*Entered May* 28, 1884.)

On this twenty-eighth day of May, A. D. 1884, being the one hundred and eighth day of November term, A. D. 1883, the said cause came on to be heard before Hon. Lebaron B. Colt, district judge, sitting as a circuit court, on the amended bill of complaint and the demurrer thereto of Thomas C. Greene, receiver of the Franklin Institution for Savings; and, after reading the same and hearing counsel for the respective parties, it is now ordered, adjudged, and decreed that the said amended bill of complaint be, and the same is hereby, dismissed as against the respondent Greene, receiver as aforesaid, and that the said respondent, Thomas C. Greene, receiver as aforesaid, do have and recover of the complainant, Francis D. Moulton, his costs of suit, to be taxed by the clerk.

By the court, May 28, 1884.

HENRY PITMAN, *Clerk.*

Assented to.

A. & A. D. PAYNE,
Complainant's Solicitors.

Testimony.

Depositions of witnesses produced, sworn, and examined the first, second, and fourth days of January, A. D. 1884, at Providence, R. I., under and by virtue of a commission hereunto attached, issued out of the circuit court of the United States, within and for the Rhode Island district, in a suit in equity now pending in said court, wherein Francis D. Moulton is complainant and Zechariah Chafee and others are respondents, as follows:

ZECHARIAH CHAFEE, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

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To questions proposed by JAMES TILLINGHAST, Esq., of counsel for said Zechariah Chafee:

Int. 1. What is your name, age, and residence?

Ans. Zechariah Chafee; I will be sixty-nine years of age on the eleventh day of this month; Providence, R. I.

Int. 2. Are you one of the defendants in this case?

Ans. Yes.

Int. 3. And are you the trustee named in the mortgage made by the A. & W. Sprague Manufacturing Company and others, dated Nov. 1, 1873, and in the several deeds of assignment made by said company and by Amasa Sprague and William Sprague and the firm of A. & W. Sprague, each bearing date April 6, 1874, referred to in the pleadings in this cause?

Ans. Yes.

Int. 4. Please state whether or not among the estates conveyed to you by that mortgage deed and the several deeds of assignment was included the estate in South Kingston, where said William Sprague had formerly resided, known as the Canonchet estate.

(A. B. Patton, of counsel for William Sprague, one of the respondents in said suit, requests the examiner to note an exception to this question.)

Ans. It was included.

Int. 5. Please state whether or not you, as such trustee and assignee under the several deeds above mentioned, sold said estate; and, if so, state when, how, who became the purchaser, and the circumstances attending the sale and subsequent dealings with said complainant, Francis D. Moulton, respecting the same.

Ans. The estate was sold at public auction on Tuesday, the fifteenth day of August, 1882. The terms of sale were five per cent. cash at time of sale, twenty per cent. cash on delivery of possession within ten days from sale, and fifteen per cent. on the fifteenth day of each month, beginning with the fifteenth day of September next ensu-

ing, interest to be charged at the rate of six per cent. per
422 annum, deed to be delivered on the final payment, and all payments except the first to be made to me at office, No. 3 Exchange Place, Providence. At the time and place and in the manner mentioned said property was sold to Francis D. Moulton, of the State of New York, he being the highest bidder therefor, at the sum of $62,650; that said Moulton complied with the terms of the sale by the payment to me of five per cent. of the purchase-money immediately after the sale; that at the time of sale I found the gates of said premises locked and chained, the bridge leading to the house on said estate torn up, and a notice posted on the gate of said premises as follows, namely: "No admittance. Canonchet and grounds closed to all carriages and persons. Signed, William Sprague;" that at the said sale I was warned by A. B. Patton, claiming to act as the attorney of said William Sprague and his family, that I would best consult my personal safety by keeping away from and out of the presence of said William Sprague, and that it would be dangerous for me to approach said Sprague at the house on said premises.

(A. B. Patton requests the examiner to note an objection to the testimony relative to information derived from said A. B. P. last above testified to.)

That at said sale the son of said William Sprague also appeared and forbade the auctioneer and bidders from entering on said premises, acting under the authority of said William Sprague.

(A. B. Patton requests the examiner to note an objection to the above answer, upon the ground that the evidence given by the son of William Sprague is no evidence against William Sprague.)

That at said sale said Patton also endeavored to deter and intimidate bidders and depreciate the price of said estate by giving various misleading and unwarranted notices of pending suits, defects in title, and so forth.

(A. B. Patton objects to this as immaterial.)

That at said sale said premises and house thereon were guarded by an armed patrol under the control and authority of said William Sprague; that on the 25th of August, 1882, in the endeavor to carry out said terms of sale, I, in company with said Francis D. Moulton, proceeded to said Canonchet for the purpose and with the
423 intent of giving to said Moulton possession of said estate and of receiving from said Moulton the stipulated payment of twenty per cent. of said purchase-money; that I found the gate of said premises locked and chained as before and guarded by two mounted men and three or more men on foot, one of whom came forward within said gate, armed with a heavy bludgeon or cart stick; that one Tennant, a resident of the village of Arctic, in the town of Warwick, came forward and addressed me, and, in answer to a demand for permission to enter said premises, replied that he had been placed in charge of said gate with orders from William Sprague to allow no one to enter; that said house was guarded by

some ten (10) or more men armed, and that if I approached said house it would be at my own peril. I was informed by said Tennant and by others that said William Sprague had made violent threats against my life if I should approach or attempt to enter upon said premises. I also saw upon the tower of said house an armed guard with a musket or rifle, who several times discharged his piece during the conversation and thereafter; that thereupon, being refused admission to said gate, I drove on with Mr. Moulton to another portion of said premises, and then said to Mr. Moulton, "I deliver to you the possession of this estate and demand payment of the agreed twenty per cent."

Mr. Moulton had in his possession the requisite sum of $12,450 in legal-tender notes of the United States, and thereupon made tender of the same to me upon condition of receiving quiet and undisturbed possession of the whole of said premises, but was not satisfied with his present possession and refused to pay over said sum unless he could have such possession as he desired; that thereupon I and Moulton returned to said gate, and, seeing there William Sprague, Jr., the son of William Sprague, called him to the carriage and I asked him, "What are the orders?" In reply he said that no one should be admitted. I asked him how many men were at the house. He replied that they had enough and stated that they were armed. Said Tennant also again approached me and urged me not to go near said house or said William Sprague, as he believed my life would be endangered thereby. The gate was guarded
424 as before and an armed guard was seen walking up and down the lawn in front of said house. Said Tennant also informed me that the other entrance gate of said premises was similarly guarded, and that I could in no way enter said premises except at my own peril: Thereupon said Moulton professed himself not satisfied with the possession of said premises so as aforesaid delivered by me to him, and refused to pay over said sum of money in accordance with said terms of sale. I was informed by said Tennant and by William Sprague, Jr., that said William Sprague was present at Canonchet during the time of the above proceedings, and was also informed by Mr. Moulton and others that said William Sprague had told both Moulton and other parties that he would not surrender possession of said estate or allow said sale to be carried out.

Int. 6. State whether or not at the time of the demand by you for the twenty per cent. of Mr. Moulton, as above stated, you and he were actually upon a portion of the estate which he had purchased at the auction sale.

Ans. Yes; we were.

Int. 7. Can you state more particularly what notice or notices, protest or protests, were made by Mr. Patton on the day of sale?

Ans. It was stated by Mr. Patton that the property belonged to William Sprague by the right of possession, peaceable possession, for twenty years, and that he should hold the property under that right, and that Amasa Sprague's wife had a dower right, and that it had been sold under an attachment of the Bank of Commerce of New York city, and that other attachments were placed upon the prop-

erty, one of which, I think, was mentioned as the Randolph attachment; that it was also stated that it had been attached by Winthrop De Wolf as receiver of the Franklin Savings Bank.

Int. 8. What, if any, reply was made respecting the attachment and sale by the Bank of Commerce and by whom, if you recollect?

Ans. The statement was made by Mr. C. Frank Parkhurst that the purchaser would get the title that was possessed by the Bank of Commerce, in addition to the trustee title, from myself.

Int. 9. State whether or not all these notices and this reply were made publicly in the presence and hearing of all assembled at the sale, and also in the presence and hearing of Mr. Moulton,
425 and before the estate had been put up by the auctioneer or the bidding made.

Ans. They were distinctly stated in the hearing of all present. Moulton was present. It was before any bids were taken.

Int. 10. Please state how and under whom and by what arrangement said William Sprague, after the trust conveyances to you hereinbefore referred to and prior to and at the time of the sale, had been and was in the occupation of this Canonchet estate.

Ans. He was allowed to stay there by me until the estate was disposed of for the purpose of seeing to its proper care and attention.

To questions in cross-examination proposed by A. B. PATTON, Esq., counsel for William Sprague, one of the respondents, and on the behalf of said Sprague, said CHAFEE doth depose and say as follows:

X Int. 1. In the answer to the seventh direct interrogatory you stated that Mr. Patton was present at the time of the pretended sale, and stated by way of protest that William Sprague was in possession of the premises described in the bill, and that he claimed a title to same by holding possession of them for a period of twenty years. Has he not since made the same claim of title to the premises, and was there not a suit brought by you in trespass and ejectment, wherein that same question was involved in the pleadings and proof, and was there not a verdict of the jury entered for the defendant?

(Mr. James Tillinghast, counsel for the respondent Chafee, objects to said question because it is immaterial, irrelevant, and incompetent and not in cross-examination.)

Ans. There has been a suit since, and on one point left to the jury by the court, whether William Sprague was in possession at the time the summons was served on him, and the jury decided that there was no proof that he was in possession at the time of the summons. The verdict was in accordance with what I have said.

X Int. 2. In answer to the same interrogatory you stated that Mr. Patton stated by way of protest that Amasa Sprague's wife had a right of dower in the property. Has she not within a short time past executed a release to you of her dower right in that property?

426 Ans. Under an agreement with Mrs. Sprague in sale of property to her she releases any dower, if any, in the Canonchet property. I don't think she had any dower.

(Mr. Patton notes an objection to the reply, "if any" and "I don't think she had any dower," as not called for by the question.)

X Int. 3. You also stated, in answer to the same interrogatory, that protest was made that one Randolph had placed an attachment upon the property. Was it not a fact that such an attachment had been made upon the property, and has not the property been since sold under that attachment? Was it not also a fact that an attachment had been made upon the property by Franklin Savings Bank, Winthrop DeWolf, receiver, and has not the property been sold under an execution which issued in that case and bought in by the said DeWolf prior to the time of the sale made by you to Moulton?

Ans. I have been told that it has been sold under the Randolph attachment. I did not attend myself and do not know the particulars. I have been told that an attachment had been made by the Franklin Institution for Savings, and that the property has been sold under an execution in that case. I did not attend the sale and I know nothing of the particulars. I do not know whether the property was bought in by said DeWolf prior to the time of the sale made by me to Mr. Moulton. I do know that the Bank of Commerce sale was made previous to the Franklin Bank or the Randolph sale.

X Int. 4. Was there any other notice or notices, protest or protests, made by Mr. Patton at the time of the sale to Mr. Moulton spoken of?

Ans. Not that I now recollect of. There was a great deal said at the time, but I made no minutes of what was said.

X Int. 5. In answer to Int. 5 of the direct examination you stated that Mr. Patton endeavored to deter and intimidate bidders and depreciate the price of said estate by giving various misleading and unwarranted notices of pending suits and defects in title. Please state wherein the notices of protests made by Mr. Patton were misleading and unwarranted notices of pending suits and defects in title.

427 Ans. In speaking of the claims of Mr. Sprague's title by possession; also the Randolph attachments and the De Wolf sale under execution; all had a tendency to intimidate buyers.

X Int. 6. Were these not true?

Ans. No; I don't think they were.

X Int. 7. Wherein were they not true?

Ans. William Sprague had no twenty years' possession.

X Int. 8. Is that all you have to say upon that point?

Ans. It is not necessary to say anything of the other cases.

X Int. 9. You say you was appointed trustee under a certain trust mortgage deed made by A. & W. Sprague Manufacturing Company and others, and also assignee under deeds of assignment made by A. & W. Sprague Manufacturing Company and others. Have you those deeds here and will you allow me to examine them?

Ans. Yes, sir; I have them here, and I have no objection to Mr. Patton examining them.

(Deeds produced and handed to Mr. Patton as follows: Trust mortgage of Nov. 1, 1873, recorded in South Kingston, in book 24, pp. 471 to 477; assignment of Amasa Sprague to Z. Chafee, dated April 6, 1874, recorded in South Kingston Jan. 6, 1883, in book 29, pp. 9 and 10; assignment, Wm. Sprague to Z. Chafee, dated April 6, 1874, recorded in South Kingston, in book 29, pp. 12 to 14; assignment A. & W. Sprague to Z. Chafee, dated April, 1874, Record Book 29, pp. 10 to 12, South Kingston; assignment, A. & W. Sprague Manufacturing Company to Z. Chafee, dated April 6, 1874, Record Book 24, pp. 593, 594, in South Kingston. For copies see Exhibits A, C, E, D, and B, hereunto attached.)

X Int. 10. The trust mortgage deed purports to have been printed originally to Amos D. Lockwood, George C. Nightingale, and Rufus Waterman, and that these names were erased and the name Zechariah Chafee inserted in their stead. Please state when these erasures were made and when this deed was executed and delivered to you.

(James Tillinghast objects to the question on the ground that it is not in cross-examination.)

428 Ans. The erasures were made before the deed was executed and delivered to and accepted by me, which was on the 1st of December, 1873.

X Int. 11. When, if you know, were these erasures made?

(Mr. Tillinghast objects for the same reason as to the last question.)

Ans. I didn't see them made, but have every reason to believe they were made on the evening of the 1st of December, 1873, at the residence of Fanny Sprague, in an adjoining room to that one I was in.

Jan. 1, 1884, 5 p. m.—Adjourned to Tuesday, January 4, 1884, at eleven o'clock a. m.

J. H. SOUTHWICK, JR., *Examiner.*

X Int. 12. Please to state who were present at the house of Fanny Sprague Dec. 1, 1873, at the time when you accepted the trust deeds.

Ans. Fanny Sprague, Mary Sprague, Amasa Sprague, George Harris, Thomas A. Doyle, Frank Latham, James Tillinghast, Charles Hart, Benjamin F. Thurston; Henry Martin called, and maybe one or two others. Amasa Sprague's wife was in and out.

X Int. 13. Who personally asked you to go to the house of Fanny Sprague, and at what time did you reach the house?

Ans. Thomas A. Doyle called at my residence and requested me to go up to Fanny Sprague's residence at about ten o'clock.

X Int. 14. Did you remain in the dining-room or in the sitting-room?

Ans. The most of the time I was in the sitting-room. I was in the hall part of the time. I talked with the old ladies in the hall.

X Int. 15. Were parties at work in the dining-room altering or changing the deeds?

Ans. There were parties in the dining-room attending to the business. I don't know what they were doing.

X Int. 16. Please state what they were doing.

Ans. I was not in that room and cannot tell what they were doing. I have every reason to believe that they were attending to the business. It was on business.

X Int. 17. Was you informed what that business was?

429 Ans. The deeds were handed to me and read by me, and by me accepted. I was informed by Thomas A. Doyle they wanted me on business. I knew very well they were on this business after I reached the house.

X Int. 18. What do you mean by this business?

Ans. I mean their intention of deeding this property to me in trust for the creditors.

X Int. 19. Did you not understand that they had previously deeded the property to three trustees, to wit, Waterman, Lockwood, and Nightingale, and did you not understand that the persons in the dining-room were erasing the names of the three trustees and writing in your name as trustee?

Ans. I was aware that it was their intention to convey the property to the three trustees. I was also aware that the three trustees declined to accept. I knew nothing about the erasing of the names of the three trustees until the deed was handed to me, when I saw the erasures.

X Int. 20. Have you before you the trust mortgage deed dated Nov. 1, 1873, recorded in South Kingston, and does it not show the erasures of the names of Waterman, Lockwood, and Nightingale as trustees and the insertion in their place and stead of your name, and does said mortgage deed not show that it was acknowledged Nov. 28, 1873, and the 28th of November erased and the 1st of December inserted?

Ans. I have it before me, and it does show the erasures of the names of Waterman, Lockwood, and Nightingale and the insertion of my name. I will swear that the deeds were acknowledged Dec. 1, 1873. It does show that the twenty-eighth day of November was erased and the first day of December inserted, and the acknowledgment made.

X Int. 21. Will you produce before the court at the time and place of hearing in these cases for the inspection of the court all the trust mortgage deeds executed to you Dec. 1st, 1873, and the assignments already referred to at the hearing of this cause?

Ans. I will deliver them to my counsel for that purpose.

X Int. 22. At what hour did you leave the house of Fanny Sprague that night?

430 Ans. I can't recollect the hour, but know it was late.

X Int. 23. Was it before or after midnight?

Ans. I can't remember, but think it was after midnight.

X Int. 24. Were the deeds delivered to you that night; and, if yes, by whom?

Ans. The deeds were put into my possession that night by the parties present. I think it was Amasa Sprague who handed them to me. I am not positive about that, and they were by me ordered to be sent to the recorder's office for record.

X Int. 25. Did you deliver all or any of said deeds to Amasa Sprague before you left the house that night for record; and, if yes, which ones?

Ans. The deeds were put into the hands of George Harris with orders to have them recorded—my orders to have them recorded. I don't recollect of giving Amasa any deeds.

X Int. 26. Did you give orders to have any or all of said deeds recorded that night?

Ans. I gave orders to have them recorded as soon as possible.

X Int. 27. What was your reason for having them recorded "as soon as possible?"

Ans. I considered it my duty to let the creditors know of my acceptance of the trust.

X Int. 28. Were they not recorded that night for fear of attachments being placed on the property?

Ans. I have already sworn that I ordered them recorded as soon as possible; as it was rumored attachments were intended.

X Int. 29. Do you mean attachments by the creditors of the A. & W. Sprague Manufacturing Company?

Ans. I do; by some of them.

X Int. 30. Had there been about Oct. 31, 1873, an appraisal of the assets of the A. & W. Sprague Manufacturing Company, and an estimation of the liabilities of the same made by James Y. Smith and others, a committee of the creditors of said company appointed to investigate the affairs of the company, and did you have general knowledge of the report of said committee?

Ans. I read said report at the time, and in general opinion
431 of good judges the property was greatly overestimated in value, and thousands of acres of land valued at $1,000 down to $600 per acre, much of which sold for less than twenty dollars per acre.

X Int. 31. Please to state as near as you can what said committee estimated the assets of said company and what they estimated the liabilities.

Ans. That statement showed the surplus over and above the liabilities to be $8,019,804.

X Int. 32. Please refresh your recollection from the printed case of yourself in equity against the Fourth National Bank *et als.*, in the State of Maine, 1879, on p. 96 of said report, and state the assets and liabilities of said company and the surplus.

Ans. That statement shows: the assets, $19,495,247; the liabilities, $11,475,443; the surplus, $8,019,804.

X Int. 33. When you accepted the trust deed were their assets substantially the same as Oct. 31, 1873?

Ans. We took an inventory after I accepted the trust of the stock and supplies, Dec. 13, 1873, and found the same one estimated by the committee, about $300,000. We took no inventory of real estate or

bank stocks or stocks of any corporation; simply the stock and supplies at the mills.

X Int. 34. Was William Sprague, whose name appears upon said exhibits as grantor, present at the house of Fanny Sprague the night of Dec. 1, 1873?

Ans. I think William Sprague was not present.

X Int. 35. Was it not the intention of the assignors in said exhibits or a part of them in making said assignments to hinder and delay their creditors from enforcing their claims at law and to place their property in your hands as trustee so that the same could not be reached by their creditors by ordinary legal process?

Ans. I know not what their intentions were. The trust was given to me and accepted by me in good faith for the benefit of all their creditors.

X Int. 36. Did you expect at the time you accepted said trust that you would be able to pay the creditors and have a resulting surplus to be returned to the assignors?

Ans. At the time I accepted the trust I then believed the
432 creditors would be paid in full and something left, which would go to them, the assignors.

X Int. 37. Was it not the opinion of yourself and the assignors or a part of them that if the property could be saved from the sacrifice of law and carried on for about three years that the creditors might be paid and considerable portion of the estate remain, and were not the trust notes issued by you under said exhibits made with that view, and did you not expect to meet them at maturity?

Ans. At the time of the issue of the trust notes it was thought by all interested parties that the notes would be paid in full.

X Int. 38. Were not the assignments made to you that night, Dec. 1, 1873, made and recorded to prevent the creditors from enforcing matured claims by attachment upon the property?

Ans. They were made and accepted by me in good faith. As to that question any one can judge what they were made for. This last clause was my remark to Mr. Patton and not part of my answer to the question.

X Int. 39. Had you heard rumors on the street or elsewhere previous to Dec. 1, 1873, that the creditors threatened attachment? And, if yes, state when you heard it and what you heard.

Ans. On the Saturday previous I heard in the post-office lobby that if the Spragues did not make over their property in trust for their creditors' benefit that some of the creditors would put on attachments. That was the rumor. That was all the rumors of attachments I heard.

X Int. 40. Was business dull and times hard, and was there a general panic throughout the country in the year 1873?

Ans. The general business for New England manufacturers was not prosperous and a tight money market prevailed.

X Int. 41. Was the A. & W. Sprague Manufacturing Company hard pressed for money and unable to meet its maturing liabilities at the time you accepted the trust?

Ans. Their requirements were large and they were unable to obtain funds to meet the payments.

X Int. 42. After you accepted the trust did you continue the business of manufacturing in about the same manner the company had carried it on; and, if yes, down to about what time?

433 Ans. The business of manufacturing cloths and calicoes was continued till August, 1881, with some slight stoppage; but that business only was continued; all the iron business and all outside matters were discontinued.

X Int. 43. Were Amasa and William Sprague employed by you for awhile, and were they consulted in the general management of the business carried on?

Ans. They were.

X Int. 44. Were they not the general managers of the company prior to the suspension of the company, in 1873, one acting as president and one as treasurer?

Ans. They were, with the exception of William Sprague resigning before I became the trustee.

X Int. 45. For how many years after you accepted the trust did you continue to purchase materials, manufacture it, and sell the product?

Ans. The material was not all purchased by me; they were done with my consent. The chemicals and drugs mostly were purchased by Amasa Sprague. We all acted in concert. Mill supplies, excepting cotton, were purchased by Mr. Brown; the cotton mostly purchased by myself. All the goods for the store were purchased by Mr. Coleman. This continued about seven years.

X Int. 46. Whose money was employed to carry on this operation?

Ans. The business was done in the name of the Quidnick Company. The Quidnick Company's credit was used. In some instances I gave my individual name for obligations for the interest of the concern.

X Int. 47. Who was to have the profit of the enterprise, if there had been any profit?

Ans. The holders of the trust notes were to be paid first, the balance, if any, in accordance with the trust deed.

X Int. 48. In what capacity did Amasa Sprague, O. E. Coleman, and Mr. Brown act in making their purchases to carry on the business and under whose direction did they operate?

Ans. Mr. Coleman and Mr. Brown were salaried men and acted under my direction. Amasa Sprague received a good living

434 for his services, and took the general management of purchasing the drugs and carrying on the print works with my consent as long as he stayed.

X Int. 49. Was there a contract between the A. & W. Sprague Manufacturing Company and the Quidnick Company, entered into Dec. 18, 1873, in relation to the carrying on of business; and, if yes, was the business you have described carried on under the terms of said contract, and will you annex a copy of said contract to this deposition?

(See copy annexed, marked "Exhibit F.")

Ans. Yes.

X Int. 50. Was not the payment of the indebtedness of the creditors of the A. & W. Sprague Manufacturing Company postponed for three years by reason of said assignment to yourself?

Ans. Yes, with the assent of the creditors.

X Int. 51. Was not all of the stock of the Quidnick Company the property of the trust estate?

Ans. Not at the time (at the date) of the trust deed. Subsequently all the stock of outside stockholders, with the exception of Edwin Hoyt's estate, was purchased by the Quidnick Company, in 1874 or 1875, within two years of the trust deed.

X Int. 52. Did each of the grantors deliver to you under the trust deed individual property, real or personal; and, if yes, about how much individual property did each grantor turn over to you as trustee?

Ans. The following property was turned over to me as trustee by the grantors, the valuation being same as was affixed by the committee of creditors Oct. 3, 1873:

By Mrs. Fanny Sprague:	
802 shares Quidnick Company	$300,000
Homestead estate	125,000
House on Y'ng Orchard avenue and lots on Pitman street	60,000
Bank stock	10,000
	$495,000
By Mary Sprague:	
601 shares Quidnick Company	$228,140
Homestead estate	100,000
Bank stock	100,000
	$428,140
By Amasa Sprague:	
Ladd farm, Warwick	$75,000
By William Sprague:	
Washington estate	$130,000
Land and houses, Peace street, Providence	25,000
	$155,000
	$1,153,140

X Int. 53. Did each of the grantors have individual creditors; and, if yes, what action did you take on their indebtedness except that of the A. & W. Sprague Manufacturing Company, already described by you?

Ans. I believe Mary Sprague and Fanny Sprague were not in debt. William Sprague and A. & W. Sprague turned into my hands their individual property, and under the trust deed I issued the

trust notes in settlement of their debts. I don't recollect of Amasa owing anything. If he did, I issued the notes for it, if any.

X Int. 54. State whose separate indebtedness were included in the trust-mortgage notes issued by you and the amount of the indebtedness of each.

Ans. The A. & W. Sprague Manufacturing Company, A. & W. Sprague, Amasa Sprague, William Sprague.

Further Ans. I decline to answer the latter part of that question, to wit (" and the amount of the indebtedness of each "), on account of the great labor involved in answering it, unless directed to do so by the court, being advised that it is entirely immaterial to this case.

X Int. 55. State the amount of the indebtedness of the A. & W. Sprague Manufacturing Company, and, whether or not that indebtedness or any part of the same—and, if so, what part—was incurred by advances or loans of money or credit given to other cor-
436 porations in which the A. & W. Sprague Manufacturing Corporation, the A. & W. Sprague Copartnership Company, or the Spragues or either of them was stockholders and to what corporations. State the business of the corporations to which the money was so loaned, advanced, or credit given and for what purpose the loan, advance, or credit was made.

Ans. I decline to answer that question, on account of the great labor involved in answering it, unless directed to do so by the court, being advised that it is entirely immaterial to this case.

X Int. 56. I show you the several deeds of assignment heretofore referred to, dated April 6, 1874. Will you please state at whose instance those assignments were made?

Ans. They were made at the instance of the assignors, at the request of several large creditors.

X Int. 57. At the time they were made did you not in your capacity as trustee claim to have the title in possession of all the company property?

Ans. I believe I then had, but accepted these to make it stronger, if they did make it any stronger.

X Int. 58. Did not one of the banks in the city of Providence about that time threaten to put the A. & W. Sprague Manufacturing Company in bankruptcy if that or some such assignment was not made?

Ans. It was rumored that the Bank of Commerce of Providence had commenced proceedings in bankruptcy. I don't know that the assignment was made for that cause. The proceedings in bankruptcy were discontinued; were not pushed, anyhow. I don't know whether it was on account of the assignment or not.

X Int. 59. Did you in your capacity as trustee incur new debts and extend old ones?

Ans. Don't recollect of any particular instances, but if I did it was for the interest of the business.

X Int. 60. You do not understand my question: Were not all the trust notes extension of old debts, and in carrying on the manufacturing business did you not daily incur new debts and pay them?

Ans. The trust notes were given in settlement of old debts
437 or liabilities. In carrying on the daily business it was done mostly in the name of the Quidnick Company, and if any purchases were made for the A. & W. Sprague Manufacturing Company by me as trustee they were paid.

X Int. 61. Why was the business carried on in the name of the Quidnick Company?

Ans. Because it was so agreed with the Quidnick Company.

X Int. 62. Can you state the amount of manufacturing business done by yourself as trustee from the time you commenced until August, 1881.

Ans. $29,802,286.10.

X Int. 63. Did you as trustee change any of the investments of the A. & W. Sprague Manufacturing Company, such as stocks or bonds, or buy or sell stocks or real estate or lease real estate?

Ans. I transferred some First National Bank stock to the Quidnick Company; sold it to them; no recollection of buying any real estate or stocks; have sold stocks and real estate, as the books will show, and have leased more or less property.

X Int. 64. How soon after the deeds of trust, Dec. 1, A. D. 1873, did you assume control of the property?

Ans. I think there was no delay. I have no recollection but what I took right hold of it.

X Int. 65. State whether or not you have paid to any one claims at par in cash instead of giving them the trust notes. I mean creditors who refused to accept the trust notes.

Ans. I think, as far as I can recollect, there was one party I paid a small debt. He threatened bankruptcy, and under advice of counsel I paid it. We were doing a fair business, and we thought on account of the interruption we had better pay it.

X Int. 66. Have you ever paid more than one dividend to the holders of the trust notes?

Ans. I have paid one dividend of ten per cent. on principal, besides the first four instalments of interest on the mortgage notes.

X Int. 67. Was the individual indebtedness of William Sprague and of Amasa Sprague and the firm indebtedness of A. & W. Sprague included in the trust notes?

438 Ans. I issued the trust notes to their creditors.

X Int. 68. Were any of the trust notes issued to any of the creditors of the A. & W. Sprague Manufacturing Company after the 21st of July, A. D. 1874?

Ans. There was no direct issue of trust notes after that date. There were some debts settled by trust notes borrowed from the Quidnick Company.

X Int. 69. Please to state what debts were settled after Aug. 1, 1874, by taking trust-mortgage notes, who were the debtors, the amount of the debts, and the date of the settlement.

Ans. On Nov. 25, 1874, gave for A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co..... $2,500

Jan. 18, 1875, gave on A. & W. Sprague Manufacturing Company interest account to Wm. Sprague, guardian of Byron Sprague's children..... 550

Gave Jan. 29, 1875, on A. & W. Sprague Manufacturing Company draft on Wight & Tillinghast		10,000
Jan. 30, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co.		5,000
Feb. 25, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co.		10,000
March 3, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co.		5,000
March 29, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co.		5,000
April 24, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co.		10,000
May 14, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co.		5,000
May 28, 1875, gave W. H. Jackson & Co. for William Sprague account		750
May 31, 1875, A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co.		5,000
Aug. 20, 1875, A. & W. Sprague Manufacturing Company guarantee of balance due on E. C. Gallup's note		47,950
439 Sept. 12, 1875, for A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co.		5,000
Jan. 18, 1876, A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague & Co.		5,000
March 27, 1876, A. & W. Sprague Manufacturing Company indorsement, and Amasa Sprague for benefit of A. & W. Sprague Manufacturing Company		5,000
June 26, 1876, gave Mason, Dawley, Wheaton & Co. for one error in bill of July 29, 1870		200

All the aforegoing were settled by the aforesaid mortgage notes which were borrowed as aforesaid from said Quidnick Company, and which had been issued to said Quidnick Company prior to Aug. 1, 1874, in settlement of its debt.

X Int. 70. How was the notes above referred to repaid to the Quidnick Company?

Ans. By returning the same amount in mortgage notes which had been regularly issued prior to Aug. 1, 1874.

X Int. 71. Will you make and annex to this deposition a list of the so-called trust property sold or exchanged by you from the commencement of your trust down to the time of the pretended sale of the estate in question, together with the dates of sale and the amounts realized from said sales, setting opposite these amounts of sales the value of the property sold as appraised by the committee of creditors above referred to in this deposition?

Ans. I decline to answer that question, on account of the great labor involved in answering it, unless directed to do so by the court, being advised that it is entirely immaterial to this case.

X Int. 72. State for what class of indebtedness you issued the trust-mortgage notes as collateral and the amount of the notes so issued as collateral.

Ans. I decline to answer that question, on account of the great labor involved in answering it, unless directed to do so by the court, being advised that it is entirely immaterial to this case.

X Int. 73. Who paid for and out of what fund was the money paid to make the purchase of the title derived from the National Bank of Commerce of New York, which is vested in Messrs. Kimball, Robinson, and Jackson?

440 Ans. I as trustee paid for that title with the trust-estate fund, by order of the creditors held at a creditors' meeting.

X Int. 74. State whether or not you have given bond as trustee for the faithful performance of this trust.

Ans. I have not; neither have I been asked to.

X Int. 75. Who was secretary of the A. & W. Sprague Manufacturing Company from July 1, 1873, to July 1, 1874, and had charge of the record books of the company?

Ans. Charles Greene from July 1, 1873, to April 6, 1874, and from April 6, 1874, inclusive, to July 1, 1874, George Harris.

(The foregoing cross-examination, taken by agreement, is subject to all objections as if specifically noted.

A. B. Patton, Esq., insists that the questions which Mr. Chafee has declined to answer be answered by him, notwithstanding.)

Redirect examination *de bene:*

Int. 1. In executing and accepting the trust deeds dated Nov. 1, 1873, and April 6, 1874, had you any purpose to hinder, delay, or defraud the creditors or any of them of the A. W. Syrague Manufacturing Company, or to put the company's property out of reach of its creditors?

Ans. None whatever.

Int. 2. Did you know of or participate in any such purpose on the part of the grantors or either of them?

Ans. No, sir; the deed was made and accepted with a view of the benefit of all parties interested. That was the honest talk.

Int. 3. At the time of execution and accepting said trust deeds did you have any knowfedge or belief that said company was insolvent?

Ans. At that time the belief was that the assets of the company would pay its debts.

Int. 4. In executing and accepting said trust deed had you, directly or indirectly, any fraudulent purpose, or did you know of or participate in any fraudulent purpose on the part of the grantors or either of them?

Ans. There was no intent of fraud or delay; all was done as a straightforward, fair, honest business matter.

441 Int. 5. At the time of executing and accepting said trust deeds did you make any agreement with the grantors or either of them by which they were to receive any benefit from said conveyances, unless as appears on the face of the papers.

Ans. None at all.

Int. 6. Up to the execution of said trust deeds had you heard any

threats of attachments or complaints or rumors of any on the part of any of the creditors, except on the ground that the execution of the trust deeds had been so long delayed?

Ans. That was the only ground that the complaints were made on, to my knowledge.

Int. 7. Was the application of the profits, if any, under the trust operations wholly regulated by the terms of the trust deeds?

Ans. Yes.

Int. 8. State whether or not the trust mortgage deeds dated Nov. 1, 1873, were made under the advice and direction of the creditors assembled at a general creditors' meeting publicly called and notified, and very fully attended, publicly held on or about Nov. 6, 1873, and worked into the form in which they were finally executed and delivered to you under the advice and direction of the committee of the creditors specially appointed for that purpose at such special meeting.

Ans. The deeds were made by request of this meeting and under the committee then appointed.

Recross-examination:

X Int. 1. Did not you understand when you accepted the deeds of trust that they contained stipulations for a return to the grantors of any surplus of the estate that might remain after the payment of the debts thereof?

Ans. I understood by the terms of the deeds that any surplus after paying the debts, expenses, and for my services, counsel fees, was to be paid over to the assignors or to the grantors, if any.

X Int. 2. What were the exigencies of the case that caused you to go to the house of Fanny Sprague at about ten o'clock at night and to remain there until past midnight to receive the deeds and to cause them to be recorded in the night time?

442 Ans. I was invited to go there by Mr. Doyle, and after reaching the house I believed it my duty to remain until the deeds were executed and ready for acceptance by me and to have the same recorded.

X Int. 3. Was it not an extraordinary and unusual manner of doing that kind of business in the State of Rhode Island?

Ans. The transaction was of so large amount that I deemed it important to give it immediate attention.

X Int. 4. In your redirect you say the deeds were made with a view of benefit of all parties interested. Please to state who you mean by all parties.

Ans. The debtors and creditors.

X Int. 5. Please to state how you understood it would be beneficial to the debtors or grantors.

Ans. It was thought at the time that the mills would make money; that sufficient time would be had for the sale of the property to better advantage and thereby the grantors and creditors would be benefited. That was the main reason talked at the time for the making and my accepting the trust.

X Int. 6. Did the committee referred to recommend the making of the deed to you?

Ans. Not to my knowledge, but after my accepting they acknowledged perfect satisfaction.

X Int. 7. Did all the creditors of the several grantors accept of the provisions of the trust and become parties thereto; and, if not, what amount did not come in under it?

Ans. About $114,000 (of which the Bank of Commerce of New York was the principal one), as appeared by the books as direct creditors.

Redirect examination resumed:

Int. 9. Did you deliver or caused to be delivered to William Sprague the trust deed of Nov. 1, 1873, and the assignment of April 6, 1874, before referred to, for his acknowledgment?

Ans. I did.

Int. 10. Did he afterwards deliver or cause them to be delivered back to you and to your custody?

443 Ans. He did.

(The foregoing redirect and recross examinations were taken subject to all objections as if specifically noted.)

ZECHARIAH CHAFEE.

Subscribed by said Zechariah Chafee in my presence this fourth day of January, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

In the circuit court, Friday, Jan. 11, 1884, upon motion by Andrew B. Patton, Esq., for a rule requiring said Zechariah Chafee to answer X Ints. 54, 55, 71, and 72, his honor Le Baron B. Colt denied the motion, as will more fully appear by reference to the files of said court.

I. H. SOUTHWICK, JR., *Examiner.*

EXHIBITS A, B, C, D, E.

EXHIBIT A.

A true copy. Attest: I. H. Southwick, Jr., examiner.

This indenture, made and entered into this first day of November, A. D. eighteen hundred and seventy-three, by and between the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island and transacting business in the city of Providence; William Sprague, of South Kingston; Amasa Sprague, of Cranston; Mary Sprague, widow of William Sprague, deceased; Fanny Sprague, widow of Amasa Sprague, deceased, of said Providence, all in said State, and the said Amasa Sprague and William Sprague, as copartners doing business under the firm of A. & W. Sprague, as parties of the first

part, and Zechariah Chafee, of said Providence, as party of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Com-
444 pany and the said A. & W. Sprague and said Amasa Sprague and William Sprague, individually, are now indebted or under liability, primary or secondary, in divers sums of money to divers persons, amounting in the aggregate to about the sum of fourteen millions of dollars, and which indebtedness and liabilities said parties of the first part are desirous of funding and securing by the conveyance of their estates and properties to said party of the second part as mortgagee in trust, as hereinafter provided, and which conveyance to him as mortgagee in trust said party of the second part has agreed to and by signing these presents does accept;

And whereas, for this purpose and to this end, said A. & W. Sprague Manufacturing Company have executed their sixteen thousand five hundred negotiable promissory notes, all bearing even date with these presents and made payable to the order of said A. & W. Sprague and by them indorsed, payable three years from January 1, 1874, with interest from January 1, 1874, payable semi-annually, at the rate of seven and three-tenths per centum per annum, till said principal sum is paid, whether at or after maturity, and all installments of interest in arrear to bear interest at the rate aforesaid till paid, but reserving the right to pay said notes before maturity in installments of not less than five per centum of the principal thereof at any time the semi-annual interest becomes payable, principal and interest payable at the place of business of said A. & W. Sprague Manufacturing Company, in said Providence, said notes being of the amounts and lettered and numbered as follows, to wit: Two thousand thereof for fifty dollars each, lettered A No. 1 to A No. 2000, both inclusive; three thousand thereof for one hundred dollars each, lettered B No. 1 to B No. 3000, both inclusive; three thousand thereof for two hundred dollars each, lettered C No. 1 to C No. 3000, both inclusive; three thousand thereof for five hundred dollars each, lettered D No. 1 to D No. 3000, both inclusive; four thousand thereof for one thousand dollars each, lettered E No. 1 to E No. 4000, both inclusive, and fifteen hundred thereof for five thousand dollars each, lettered F No. 1 to F No. 1500, both inclu-
sive, and all of which notes have been placed in the hands
445 of said party of the second part, to be by him used and applied to the payment or retiring of such of the present outstanding indebtedness and liabilities aforesaid as the holders thereof shall, within nine months from the date of these presents, bring in and surrender and discharge or agree to extend for the term and according to the provisions of said notes, said notes as so issued by said trustee to be countersigned by him;

And whereas the preservation of the manufacturing properties of said A. & W. Sprague Manufacturing Company and the best interests of the creditors require, to prevent great loss and shrinkage, that the business of the mills and print works shall in the meantime be continued:

Now, therefore, said parties of the first part, in consideration of

the premises and of the trusts hereinafter declared, and in further consideration of one dollar to them paid by said party of the second part, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said party of the second part, his heirs, executors, administrators, and assigns, all the property, real, personal, and mixed, not exempt from attachment by law which the parties of the first part or any or either of them have and hold in the following city and towns in the State of Rhode Island, viz, the city of Providence, the towns of Cranston, Johnston, Coventry, East Greenwich, West Greenwich, South Kingston, Warwick, Pawtucket, Lincoln, North Providence, Cumberland, East Providence, and North Kingston; in the following towns of the Commonwealth of Massachusetts, viz, Attleborough and Palmer; in the following counties of the State of Maine, viz, Somerset, Piscataquis, Franklin, Kennebec, Penobscot, and Aroostook; in the following counties of the State of New Hampshire, viz., Grafton, Coos, Carroll, and Belknap; in the towns of Richmond and Lexington, in the State of South Carolina; in the city of Washington, in the District of Columbia; in the following towns of the State of Connecticut, viz, Sterling, Sprague, Scotland, and Windham, including, in what is known as the Baltic Mill property, in said State of Connecticut, 4 iron water-wheels, 4 rotary pumps, 3 openers, 20 lappers, 412 cards, 19 double heads, 6 doublers, 5 grinders, 19 railway heads and troughs, 30 drawing frames, 25 coarse speeders, 49 fine speeders, 275 spinning
446 frames, 34 spoolers, 16 slasher-warpers, 4 slashers, 20 warpers, 12 dressers, 36 pairs mules, 1,973 looms, 1 boring machine, 1 upright drill, 2 iron planers, 8 turning engines, 1 circular saw, 1 vertical saw, 1 wood planer, 1 gear-cutter, 2 bolt-cutters, 1 run of grist-mill stones, 1 bolter for grist-mill, 1 corn-cracker, 1 steam fire-engine, 3 gas retorts, and all the taps, dies, and tools appertaining to the machine and blacksmith's shops; and including, in what is known as the Oneco property, in said State of Connecticut, 250 stone hammers, 750 drills, and the tools and apparatus used in quarrying and cutting stone, and including, in what is known as the South Windham property, the saws and tools in the saw-mill; and including the hay in barns and elsewhere in either of said towns of the State of Connecticut; and including, generally, within the foregoing description, the two homestead estates, the Washington and Cove street lot, the Dyer-street lot, the Dorrance-street lot, the Pine and Page street lot, the Peace-street lot, the marine railway property, the lot on the corner of Hope and Waterman streets, the Fenner-avenue lot, the Martin-street property, the George, Pitman, and Ives street property, the Elmwood store property, and the Ninth-ward property, in the city of Providence; the Cranston Print Works property, with about eighteen hundred and seventy acres of land and improvements thereon, in the town of Cranston; the Natick Mills property, with about eight hundred and thirty acres of land and improvements thereon, and the Ladd farm, with about one hundred and one acres of land and improvements thereon, sometimes called the Coweset estate, in the town of Warwick; the Morgan Mill property, with about six hun-

dred and twenty-five acres of land and improvements thereon, in the town of Johnstown; the homestead estate in South Kingstown, with about four hundred and twenty-eight acres of land and improvements thereon; the mill property in Augusta, Maine, with about four hundred acres of land and improvements thereon; the mill property in Palmer, Massachusetts, with about seven acres of land and improvements thereon; the estates in the city of Washington, with about six acres of land and improvements thereon; the property in the city of Columbia, in the State of South Carolina, with about four hundred acres of land and improvements thereon, and
447 also all other the estate and property, real and personal, of every name and nature, not exempt from attachment by law, wherever situate and by whatsoever muniments of title evidenced, which any or either of the parties of the first part have or may be entitled to, in possession or action, reversion or remainder, together also with all goods, stock, and supplies, manufactured, unmanufactured, and in process of manufacture, and all fixtures, machinery, tools, and other personal property of every kind which said A. & W. Sprague Manufacturing Company may at any time or from time to time hereafter have, either in lieu of or in addition to those now on hand, but excepting from this conveyance all shares of capital stock in any and every corporation, wherever located, belonging to any or either of the parties of the first part, the same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security, to secure the performance of the conditions of this instrument:

To have and to hold said granted and bargained premises, with all the rights, privileges, and appurtenances thereof, unto and to the use of him, the said party of the second part, his heirs, executors, administrators, and assigns, in trust, for the intents and purposes and with, under, and subject to the powers and provisos hereafter contained, but subject, nevertheless, to the following condition—that is to say, upon condition that if said parties of the first part or any or either of them, their heirs, executors, administrators, or assigns, or any person for them or in their behalf, shall well and truly pay or cause to be paid all and singular the debts and liabilities aforesaid which shall be brought in under these presents and remain outstanding, as hereinbefore provided, and all expenses and liabilities of every kind incurred in the execution of the trusts hereinafter created or declared, and all the notes aforesaid that shall be issued by the trustee aforesaid, together with the interest thereon, according to the tenor thereof, then this deed shall be and become void; otherwise shall remain in force.

And, subject to the condition aforesaid, in trust for said party of the second part and other the trustees or trustee under these
448 presents for the time being, to stand seized and possessed of the said granted estates and premises, and until default shall be made in the performance of the conditions aforesaid or any part thereof, or breach shall be made of any of the covenants or agreements hereinafter contained on the part of said parties of the first part to be kept or performed, or until sale under the trusts herein-

after declared, or until entry under the power in that behalf hereinafter contained, to permit and suffer said parties of the first part to retain the possession and use of said granted premises:

Provided, and it shall be lawful for said trustees or trustee for the time being at any time or from time to time before such default or breach, and with or without previous entry, in their or his discretion to sell, at public or private sale, any part or parts of said granted estates and property, and to execute and deliver such deed or deeds as may be necessary or proper to vest in the purchaser or purchasers thereof an absolute and indefeasible estate in fee simple therein, and to stand seized of all the purchase-moneys to arise and received therefrom for the uses and purposes hereinafter declared respecting the same:

And provided further, That said trustees or trustee for the time being may at any time or from time to time before default or breach, as well as after, enter upon said granted estates and property or any part or parts thereof and take and assume the full and absolute possession and control of the same, and in their or his discretion to continue to run and operate or to close the mill or print works of said manufacturing company or any or either of them as the said trustees or trustee for the time being shall deem for the best interests of the creditors:

And provided also, and it is hereby further declared, That in case default shall be made in payment of said notes hereby secured or any or either of them or of the semi-annual interest due thereon, or breach shall be made of either of the covenants or agreements herein contained on the part of said parties of the first part to be kept and performed, and such default or breach shall continue for the space of sixty days, then in such case the said trustees or trustee
449 hereunder for the time being, in their or his discretion, may, and upon the request in writing of the holders of one-fifth in amount of the notes then issued and outstanding under these presents said trustees or trustee for the time being shall, from time to time thereafter, either before or after entry as aforesaid, sell, either together or in parcels, the estates and property aforesaid or any part or parts thereof at public or private sale, as said trustees or trustee shall think best, first giving, in case of any auction sale under this or under any other provision of this instrument, notice thereof by advertisement at least twice a week for four successive weeks in some public newspaper printed in said Providence, and such other notice as they or he may deem advisable, and upon sale thereof to execute and deliver such deed or deeds as may be necessary or proper to vest in the purchaser or purchasers thereof an absolute and indefeasible estate in fee simple therein.

And it is hereby declared that said trustees or trustee for the time being shall stand seized of all the purchase-moneys to arise and received from sales or otherwise under any of the trusts of these presents, — to apply and appropriate the same—

First, to the payment of all expenses incident to such sale or sales, and of all insurance moneys, taxes, and other charges, if any, paid or incurred by them in respect of said trust estates, together with a

reasonable compensation to said trustees or trustee for the time being for their or his own services, and reasonable counsel fees, and all other charges and liabilities paid or incurred by them either in carrying on the business or in the execution of any other of the trusts hereby created;

And, secondly, the residue of all moneys received by them under any of the trusts of this instrument from time to time to apply and appropriate ratably to the payment of the principal and interest of all the debts and liabilities aforesaid of said parties of the first part which shall be brought in under these presents and remain outstanding as aforesaid, and of all the notes that shall be issued by said trustee and be outstanding under and secured by these presents, and although by their terms the same may not then have matured, accounting to said parties of the first part, respectively, their heirs, executors, administrators, or assigns, for any surplus, if any, that may remain after the full payment thereof.

And it is further declared that no purchaser under any or either of the foregoing trusts shall be under any obligation to inquire into the necessity or regularity of any sale thereunder, nor to see to the application of any of the purchase-moneys thereof, but that the receipt of the trustees or trustee for the time being to such purchaser or purchasers for such purchase-moneys shall be his or their full and effectual acquittance and discharge therefor; and if at any time said trustee or any trustee to be appointed under these presents shall be desirous of resigning and of being discharged from the trusts aforesaid, it shall be lawful for them or him so to do, and in such case or in case said trustee or any trustee to be appointed under these presents shall die or become incapable of acting in said trust, it shall be lawful for the surviving or continuing trustees or trustee for the time being, by any writing or writings under their or his hands, to nominate and appoint, or in case at any time all the trustees for the time being shall resign together, then for the supreme court of the State of Rhode Island, sitting in equity, to appoint any other person or persons to be a trustee or trustees in the stead and place of him or them so dying, resigning, or becoming incapable of acting as aforesaid; and thereupon and as often as any such appointment shall be made all the trust estates and property then held under the trusts aforesaid shall, with all convenient speed, be so conveyed, assigned, and transferred as to vest the same in the surviving or continuing trustees or trustee, and such new trustees or trustee, or if there be no continuing trustee, then in such new trustees or trustee only, their or his heirs, executors, administrators, and assigns, to the same uses and upon the same trusts as are herein declared concerning the same; and every new trustee under these presents so appointed or otherwise duly appointed by any court of competent jurisdiction may immediately exercise any power or discretion herein granted in the same manner as though originally named as trustee herein, and although the trust estate be not then vested in him; and no trustee under these presents shall be answerable or accountable for any loss which may happen to said trust estate or property unless the same shall happen by his own neglect or default.

And the said parties of the first part, for themselves and for their respective heirs, executors, administrators, and assigns, do hereby covenant with the said party of the second part, his heirs, executors, administrators, and assigns, at any time or from time to time during the continuance of this security, to execute and deliver to the party of the second part, or other the trustees or trustee under these presents for the time being, or to any purchaser under any of the foregoing trusts, such further conveyances or assurances of the estates or property hereby conveyed or intended to be conveyed, or any part or parts thereof as said trustees or trustee for the time being may reasonably require, and at all times during the continuance of this security, at their own cost and charges, to keep and maintain insurance for the benefit of said party of the second part under these presents upon the mills, buildings, machinery, and other insurable property hereby conveyed or intended to be conveyed, in such reasonable amounts and in such insurance companies as said trustees or trustee for the time being shall approve; also that the profits that shall hereafter accrue in the business of said manufacturing company shall from time to time be by said company paid over to said trustees or trustee for the time being, to be held and applied to any of the purposes aforesaid in the same manner as the other trust moneys under these presents; also to pay all taxes and assessments, rates and charges, of every nature that may be laid or levied upon or in respect of said granted premises; and in default thereof it shall be lawful for said trustees or trustee for the time being to effect such insurance and to pay said taxes, assessments, rates, and charges, and all sums paid therefor shall be a further lien upon said granted premises secured by these presents.

In testimony whereof said A. & W. Sprague Manufacturing Company have caused these presents to be signed and its corporate seal to be hereto affixed by said Amasa Sprague, its treasurer, for this purpose fully authorized, and said other parties of the first and second parts have hereunto set their hands and seals this
452 said first day of November, A. D. eighteen hundred and seventy-three.

A. & W. SPRAGUE M'F'G CO.,
By AMASA SPRAGUE, *Treas.* [L. S.]
(Signed) WILLIAM SPRAGUE. "
AMASA SPRAGUE. "
MARY SPRAGUE. "
FANNY SPRAGUE. "
A. & W. SPRAGUE. "
ZECHARIAH CHAFEE. "

Signed, sealed, and delivered in presence of—
THOS. A. DOYLE.
F. W. LATHAM.
GEORGE HARRIS.
HENRY T. BRAMAN, to William Sprague.

THE STATE OF RHODE ISLAND, ETC., } ss:
City and County of Providence, }

Be it known that in the said city of Providence, on this first day of December, A. D. 1873, before me, Henry Martin, a justice of the peace for the said city of Providence, a notary public for said State of Rhode Island, and a commissioner for the State of New York, residing in said city of Providence, personally appeared Amasa Sprague, Fanny Sprague, and Mary Sprague, who are personally known to me to be the same persons described in and who signed, sealed, and executed the foregoing instrument, and they then and there severally acknowledged to me that they signed, sealed, executed, and delivered the said instrument as and that the same is their free and voluntary act and deed for the uses and purposes therein mentioned and expressed; and at the same time and place the said Amasa Sprague, also personally known to me to be the same person who executed the foregoing instrument as treasurer, in his capacity as treasurer of the A. & W. Sprague Manufacturing Company, also acknowledged to me that he signed, sealed, exe-
453 cuted, and delivered the said instrument as and that the same is his free and voluntary act and deed as such treasurer and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company for the uses and purposes therein mentioned and expressed.

In testimony whereof I have hereunto set my hand and official seals, at said city of Providence, on this said first day of December, A. D. 1873.

[L. S.] [L. S.] (Signed) HENRY MARTIN,
Justice of the Peace, Notary Public, and Commissioner for the State of New York.

EXAMINER'S NOTE.—The following indorsements appear:

"Town clerk's office, South Kingston, R. I. Rec'd for record in South Kingston Dec. 2, 1873, at 5.30 p. m. Witness, J. G. Perry, T. clerk."

"Recorded in South Kingston Land Evidence Record Book No. 24, pages 471, 472, 473, 474, 475, 476, and 477. Witness, J. G. Perry, town clerk."

"Town clerk's office, South Kingston, R. I. Recorded in Record of Personal Property No. 2, pages 206, 207, 208, 209, 210, 211, 212 213 of said town. Witness, J. G. Perry, town clerk."

"Witness to William Sprague's signature and his acknowledgment appended to this instrument, received for record in the town clerk's office of South Kingston, R. I., Dec. 10th, A. D. 1873, at 6.20 p. m., and recorded in said South Kingston Land Evidence Book 24, and at page 477, and in said South Kingston Personal Property Record Book No .2, and at page 213. Witness, J. G. Perry, town clerk."

"Rec'd, Hampden county, Mass., Registry of Deeds, July 16th, 1881, at 12 o'cl. m., and recorded Book 379, page 361. Attest, James E. Russell, register."

THE STATE OF RHODE ISLAND, &c., } sc:
County of Washington, }

In South Kingston, in said county of Washington, on this 10th day of December, A. D. 1873, be it known that before me, Henry T. Braman, a justice of the peace within and for said town of
454 South Kingston, personally appeared William Sprague, one of the signers to the within instrument, and who is personally known to me to be the person he represents himself to be, and acknowledged that he signed, sealed, and delivered said instrument as and that the same is his free, voluntary act and deed and for the uses and purposes therein mentioned.

Before me—

(Signed) HENRY T. BRAMAN,
Justice of the Peace.

EXAMINER'S NOTE.—This acknowledgment appears upon a manuscript attached to the foregoing indenture.

EXHIBIT B.

A true copy. Attest: I. H. Southwick, Jr., examiner.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island, and transacting business in the city of Providence, of the first part, and Zechariah Chafee, of said Providence, of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Company is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating its estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W. Sprague Manufacturing Company, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to it paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all our right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on
455 the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims of creditors against us, the A. & W. Sprague Manufacturing Company, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same under the provisions of said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interest of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise ratably, the obligations to our creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interest of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

456 And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof said A. & W. Sprague Manufacturing Company has caused these presents to be signed and its corporate seal to be hereto affixed by Amasa Sprague, its treasurer, for this purpose fully authorized, and said Zechariah Chafee has hereto set his hand and seal this sixth day of April, eighteen hundred and seventy-four.

A. & W. SPRAGUE M'F'G CO., [L. S.]
Per AMASA SPRAGUE, *Tr.*
ZECHARIAH CHAFEE. "

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

EXAMINER'S NOTE.—The following indorsements appear:

"Received for record April 9th, A. D. 1874, at 10.30 a. m. Witness M. F. Perry, dep. town clerk. Recorded in South Kingston Land Evidence Book No. 24, pages 593, 594, & 595. Witness J. G. Perry, town clerk."

STATE OF RHODE ISLAND, ETC., } ss:
City and County of Providence, }

Be it known that in said city of Providence, this seventh day of April, A. D. 1874, before me, Charles Selden, a justice of the peace for the said city of Providence and a notary public for said State of Rhode Island, residing in said city of Providence, personally appeared Amasa Sprague, personally known to me to be the same person who executed the aforegoing instrument as treasurer, and in his capacity of treasurer acknowledged to me that he signed, sealed, executed, and delivered this said instrument as and that the same is his free and voluntary act and deed as such treasurer and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company for the uses and purposes therein mentioned and expressed.

457 In testimony whereof I have hereunto set my hand and official seal, at said city of Providence, on this said seventh day of April, A. D. 1874.

[L. S.] CHARLES SELDEN,
Justice of the Peace and Notary Public.

EXHIBIT C.

A true copy. Attest: I. H. Southwick, Jr., examiner.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague, of Cranston, county of Providence, State of Rhode Island, of the first part, and Zechariah Chafee, of Providence, county of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said Amasa Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said Amasa Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all his right, title, and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the

458 same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of

all the claims against the said Amasa Sprague, provided for in said trust deed of mortgage of Nov. 1, 1873, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same under the provisions of said deed of mortgage dated Nov. 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other claims; and said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors and so as to obtain as prompt a settlement of their claims as practicable; and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interest of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works or either or any of them or to allow the grantor to run the same or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof I have hereunto set my hand and
459 seal this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. "

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this seventh day of April, A. D. 1874, then Amasa Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument, by them signed, to be their free and voluntary act and deed.

Before me—
[L. S.] CHARLES SELDEN,
Notary Public.

EXAMINER'S NOTE.—The following indorsements of record appear:

Warwick, R. I.—Received Apr. 10, 1874, 9.45 a. m.; recorded Book C, page 94.

Providence, R. I.—Received May 8, 1874, 9.30 a. m.; recorded Book 248, page 311.

Cranston, R. I.—Received May 20, 1874, 9.25 a. m.; recorded Book 54, page 380.

East Greenwich, R.I.—Received Aug. 11, 1874, 5.00 p. m.; recorded Book 19, pages 397 & 398.

Hampden Co., Mass.—Received July 16, 1881, 12 m.: recorded Book 379, page 377.

South Kingston, R. I.—Received Jan. 6, 1883, 6.00 p. m.; recorded Book 29, pages 9 & 10.

Coventry, R. I.—Received June 12, 1883, 10.45 a. m.; recorded Book 30, pages 470 & 471.

Sterling, Conn.—Received Oct. 3, 1883, 9.00 a. m.; recorded Book 8, pages 22 & 23.

Windham, Conn.—Received Oct. 13, 1883, 10.00 a. m.; recorded Book 52, pages 398 & 399.

Scotland, Conn.—Received Oct. 22, 1883, 1.30 p. m.; recorded Book 2, pages 556 & 557.

EXHIBIT D.

A true copy. Attest: I. H. Southwick, Jr., examiner.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between Amasa Sprague, of Cranston, county of Providence and State of Rhode Island, and
460 William Sprague, of South Kingston, county of Washington and State of Rhode Island, copartners as A. & W. Sprague, of the first part, and Zechariah Chafee, of the city of Providence, State of Rhode Island, of the second part, witnesseth:

Whereas the said A. & W. Sprague are now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and are desirous of appropriating their estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W. Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to them paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all their right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantors and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against us (A. & W. Sprague) which have — or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same under the provisions of the said deed of mortgage dated November 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

And said trustee is hereby authorized and empowered and
461 it shall be his duty to act faithfully for the interest of the creditors and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to our creditors within a reasonable time.

And the said trustee is further authorized to run said mills and print works, or either or any of them, or to allow the grantor to run the same, or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him, or otherwise, he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof we have hereunto set our hands and seals this sixth day of April, one thousand eight hundred and seventy-four.

AMASA SPRAGUE. [L. S.]
WILLIAM SPRAGUE. "
ZECHARIAH CHAFEE. "

Signed, sealed, and delivered in presence of—
CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this sixth day of April, A. D. 1874, then Amasa

Sprague, William Sprague, and Zechariah Chafee personally
462 appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—

[L. S.] CHARLES SELDEN,
Notary Public.

EXAMINER'S NOTE.—The following indorsements of record appear:

Richland Co., Ga.—Received Apr. 13, 1874; recorded Book J, pages 168 & '9.

Providence, R. I.—Received May 8, 1874, 9.30 a. m.; recorded Book 248, page 313.

Cranston, R. I.—Received May 20, 1874, 9.15 a. m.; recorded Book 54, page 377.

Hampden Co., Mass.—Received July 16, 1881, 12 m.; recorded Book 379, page 375.

South Kingston, R. I.—Received Jan. 6, 1883, 6.00 p. m; recorded Book 29, pages 10, 11, & 12.

Coventry, R. I.—Received June 12, 1883, 10.30 a. m.; recorded Book 30, pages 469–'70.

Canterbury.—Received Oct. 3, 1883; recorded Book 29, page 660.

Bolton, Conn.—Received Oct. 16, 1883, 10.30 a. m.; recorded Book 14, pages 565–'6

Bristol, Conn.—Received Oct. 23, 1883; recorded Book 40, pages 84–'5.

EXHIBIT E.

A true copy. Attest: I. H. Southwick, Jr., examiner.

This indenture, made this sixth day of April, A. D. eighteen hundred and seventy-four, by and between William Sprague, of South Kingston, county of Washington, State of Rhode Island, of the first part, and Zechariah Chafee, of Providence, of the second part, witnesseth:

Whereas the said William Sprague is now indebted or under liability, primary or secondary, in divers sums of money to divers persons and is desirous of appropriating his estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said William Sprague, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to him paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all his right, title, and interest, legal
463 or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of

every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims against the said William Sprague provided for in said trust deed of mortgage of Nov. 1, 1873, which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same under the provisions of said deed of mortgage, dated Nov. 1, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all my other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors, and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interest of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise *pro rata*, the obligations to my creditors within a reasonable time.

And the said trustee is further authorized to run said mills and print works or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interests of the creditors, the profits of the same being receivable by the aforesaid grantee for the purposes aforesaid, and in case the same are thus
464 run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof I have hereunto set my hand and seal this sixth day of April, one thousand eight hundred and seventy-four.

WILLIAM SPRAGUE. [L. S.]
ZECHARIAH CHAFEE. "

Signed, sealed, and delivered in presence of—

CHARLES SELDEN.

THE STATE OF RHODE ISLAND, } ss:
County of Providence, }

In Providence, this sixth day of April, A. D. 1874, then William Sprague and Zechariah Chafee personally appeared and severally acknowledged the foregoing instrument by them signed to be their free and voluntary act and deed.

Before me—

[L. S.] CHARLES SELDEN,
Notary Public.

DISTRICT OF COLUMBIA, } To wit:
County of Washington, }

I, L. P. Williams, a notary public for said district and county, do hereby certify that William Sprague, party to a certain deed bearing date on the sixth day of April, A. D. 1874, and hereto annexed, personally appeared before me in the county aforesaid, the said William Sprague being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

465 Given under my hand and notarial seal this fifteenth day of April, A. D. 1874.

[L. S.] L. P. WILLIAMS,
Notary Public.

EXAMINER'S NOTE.—The following indorsements appear:

Washington Co., D. C.—Received Apr. 15, 1874, 1 p. m.; recorded Book 747, page 238.

Providence, R. I.—Received May 11, 1874, 10.15 a. m.; recorded Book 248, page 315.

Cranston, R. I.—Received May 20, 1874, 9.20 a. m.; recorded Book 54, page 378.

Hampden Co, Mass.—Received July 16, 1881, 12 m.; recorded Book 379, page 379.

South Kingston, R. I.—Received Jan. 6, 1883, 6.00 p. m.; recorded Book 29, pages 12, 13, & 14.

Lincoln, R. I.—Received Mar. 16, 1883, 2.00 p. m.; recorded Book 61, pages 29 & 30.

Coventry, R. I.—Received June 12, 1883, 11.00 a. m.; recorded Book 30, pages 472 & 473.

Windham, Conn.—Received Oct. 3, 1883, 9.00 a. m.; recorded Book 52, pages 397 & 398.

EXHIBIT F.

A true copy. Attest: I. H. Southwick, Jr., examiner.

It is agreed between the Quidnick Company and the A. and W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island, as follows:

That said Quidnick Company will from time to time furnish the

said A. and W. Sprague Manufacturing Company the necessary means, stock, and supplies for running their mills and print works so long as this contract shall continue in force.

That said A. and W. Sprague Manufacturing Company will manufacture all such stock and supplies into printed goods and consign the same as fast as manufactured, in the name of the Quidnick Company, to such commission houses as may be agreed upon for sale on account of said Quidnick Company, said stock and supplies and goods, in process or manufactured, at all times till sold to be and remain the property of said Quidnick Company.

That the proceeds of sales of said goods as received by said Quidnick Company shall be applied—first, to the payment of freight, insurance, and other expenses and to the repayment of all advances made by them as aforesaid, including a commission of one-quarter of one per cent. upon the amount of such advances for their
466 trouble, and the balance of said proceeds shall from time to time be paid over to said A. and W. Sprague Manufacturing Company as its compensation for manufacture.

And it is further agreed that this contract shall continue in force until terminated by thirty days' notice in writing by either party to the other party of its intention to terminate the same.

In testimony whereof said Quidnick Company has caused these presents to be signed and its corporate seal to be hereto affixed by Zechariah Chafee, its treasurer, for this purpose duly authorized; and said A. and W. Sprague Manufacturing Company has caused these presents to be signed and its corporate seal to be hereto affixed by Amasa Sprague, its treasurer, for this purpose duly authorized, this eighteenth day of December, A. D. 1873.

ZECHARIAH CHAFEE, *Treas'r.* [L. S.]
AMASA SPAGUE, *Treas'r.* "

Executed and delivered in presence of—
CHARLES B. GOULD.

Deposition of William H. Hall.

WILLIAM H. HALL, of Cranston, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by JAMES TILLINGHAST, Esq., of counsel for said Zechariah Chafee:

Int. 1. What is your name, age, residence, and occupation?

Ans. William H. Hall; age, forty-six years; residence, Cranston, R. I.; occupation, real estate broker and auctioneer.

Int. 2. Were you present at the auction sale on the fifteenth day of August, 1882, of that part of the Sprague estate known as

467 Canonchet estate, in South Kingston? And, if so, please state in what capacity you were there and what took place, stating fully.

Ans. I was there at the request of Mr. Zechariah Chafee, and assisted in the sale of the property at auction, under the direction and authority of J. O. Chandler, auctioneer in that town. I met Mr. Chafee on the premises, at one of the gates leading into the estate, near the beach. The gate was chained up, and I think the chain was fastened with a padlock.

There was a written notice on the outside of the gate forbidding any persons entering the premises, or words to that effect. The notice was signed W. Sprague. By direction of Mr. Chandler, the auctioneer, I read the advertisement giving notice of the sale, together with a description of the property and also the terms and conditions of the sale. There was one or two lawyers present who objected to the sale. They gave their reasons, and they were replied to by Mr. C. F. Parkhurst.

It was an exceedingly hot day, and we were standing in the sun, in a very uncomfortable place to make an auction sale. I stated to the company that I should take the liberty of inviting them onto the grounds, under the shade of one of the trees, and thereupon I stepped round by the gate, over the wall, and walked up the path to the bridge, and, arriving there, I found that a large portion of the planking had been removed. I walked across the bridge, on one of the timbers, as far as a willow tree on the southern side of the path, a small willow tree or small clump, I think, of willow trees. I turned round to see where the company was, facing toward where I expected to find the company, and I found that about twenty-five of them had crossed the bridge, and some had already arrived near where I stood, and others were slowly approaching. Mr. Chafee was on the opposite side of the bridge, being unable to cross on account of his lameness. He came as far as he could, however. The greater portion of the company remained on the easterly side of the bridge, where Mr. Chafee was. Just at that moment a gentleman at my side said to me, "Look out for young Sprague; he is behind you and is saying something to you." Before I went inside the gate I saw young Sprague on the inside of the gate, leaning on the gate. A few moments before he had

468 rode down from the house on a gray horse and hitched him to the clump of trees near which I was standing. Soon as I invited the company inside the gate he started on ahead toward where he had hitched his horse, and I had paid no attention to him until this gentleman cautioned me. Then I turned round as soon as the gentleman cautioned me and saw young Sprague sitting upon his horse directly behind me, and I asked him what he was saying. He replied that his orders were not to allow any one on these grounds. At that he put his hand in his side coat pocket and seemed to grasp something, which, from its shape as it appeared through his coat, might be a pistol or a revolver. I eyed him for a few seconds and then turned—turned my back on him and proceeded with the sale. The property was finally sold to Francis D.

Moulton. There were four or five other bidders. It was struck off to Mr. Moulton for $62,250.

Int. 3. About how many were present in the company at this sale?

Ans. On both sides of the bridge I should say there were present about two hundred.

Int. 4. And about how far apart were you on the two sides of the bridge?

Ans. We were quite near. They were all within sound of my voice.

To questions in cross-examination proposed by A. B. PATTON, of counsel for Wm. Sprague, one of the respondents in said suit:

X Int. 1. You say you made this sale under the direction of J. O. Chandler, an auctioneer in the town of South Kingston. Was there any protest or notice given you at the sale that Chandler was not an auctioneer in that town; and, if so, by whom?

Ans. There was some objection interposed by some one. I did not know him; his name was told me afterwards; I think his name was Tucker. Mr. Tucker said that Mr. Chandler was not an auctioneer in that town. I replied to him that I knew better; that I had in my possession a commission signed by the town clerk stating Mr. Chandler was appointed by the town council the day previous, and that he had taken his engagement.

469 (A. B. Patton, Esq., objects to the latter part of the foregoing answer on the ground that it was not called for by the question, and that the evidence is secondary.)

WILLIAM H. HALL.

Subscribed by said William H. Hall in my presence this first day of January, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

Deposition of Daniel T. Lyman.

DANIEL T. LYMAN, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by JAMES TILLINGHAST, Esq., of counsel for said Zechariah Chafee:

Int. 1. Please state your name, residence, and occupation.

Ans. Daniel T. Lyman; residence, 26 Bourbon street, Providence; occupation, accountant.

Int. 2. Have you at any time been in the employ of William Sprague; and, if so, between what dates and at what place?

Ans. I commenced in the employ of William Sprague about the 15th of January, 1882, and remained in his employ until Dec. 19 of

the same year. I kept the Governor's—that is, William Sprague's—books pertaining to the running of the Quidnick mills, and for the first two or three months of the time I was with the Governor I negotiated for the general supplies of the mill, with the exception of cotton. The office was at 6 Exchange street, Providence, rooms 18 and 19.

Int. 3. At any time shortly prior to the fifteenth day of August, 1882, was the complainant, Francis D. Moulton, at that office; and, if more than once, how many times that you saw him and for what purpose? Do you know?

Ans. While I was in William Sprague's employ it is my
470 recollection that Francis D. Moulton was in and out of the office several times. The exact dates I cannot give. Moulton was in conference with William Sprague.

Int. 4. Can you fix the times of these interviews of Mr. Moulton with Mr. Sprague with reference to the sale of the Canonchet property, whether before or after?

Ans. My impression is that he was there just previous to the sale and just after. That is as near as I can state.

Int. 5. Did you hear the conversation between Mr. Moulton and Mr. Sprague at these interviews or any part of it; and, if so, please state it.

Ans. I did not.

Int. 6. At these interviews between Mr. Moulton and Mr. Sprague was Amasa Sprague present?

Ans. My impression is that I saw Amasa Sprague present at one interview.

Int. 7. What, if anything, do you know respecting the sum of $3,300 drawn by William Sprague shortly prior to the sale of Canonchet and given to Amasa Sprague, and for what purpose, if you know? State all you know respecting the matter and any conversation you heard between the parties respecting it—that is, between said Moulton, Amasa Sprague, or William Sprague or any of them?

Ans. As to the conversation I know nothing, from the fact that Mr. Moulton and the Spragues invariably at these interviews retired to the inner office. What was said of course I know not. I know that Gov. William Sprague drew a check on his banker, I think for $3,300, and that check, if my memory serves me, was given to Amasa Sprague, and he got the money on it. I think that was the day or the day but one before the sale of Canonchet. I was strongly impressed at the time that it was drawn for the purpose of making the first payment or a payment of five per cent., and, as my recollection serves me, Amasa Sprague took the money to Canonchet the afternoon before the sale.

Int. 8. Upon what banker was that check drawn and to whose order, if you recollect?

Ans. If my memory serves me at the present time, the
471 check was drawn on Henry C. Cranston, banker, to the order of Amasa Sprague, trustee.

Int. 9. And how and by whom was it entered upon William Sprague's books, if at all?

Ans. It was entered by myself. It was entered in the margin of the check book, the check being drawn, as I said before, to the order of Amasa Sprague, trustee, and from the margin in the check book, of course, it was carried to the proper place on the books and charged to Amasa Sprague, trustee. As William Sprague signed the check he started immediately to leave the office, and I asked him what entry I should make of that check, what disposition I should make of the transaction, and he said, "Oh, you fix it up," and I did, as I said before. I charged it to Amasa Sprague, trustee.

Int. 10. From any conversation you had either with Mr. Moulton, William Sprague, or Amasa Sprague, did you learn for what purpose the money was used?

Ans. No, sir.

DANIEL T. LYMAN.

Jan. 1, 1884, 5 p. m., adjourned to Jan. 2, 1884, at 3 o'clock p. m., at same place.

I. H. SOUTHWICK, JR., *Examiner.*

Subscribed by said Daniel T. Lyman in my presence this second day of January, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

Deposition of John H. Bongartz.

JOHN H. BONGARTZ, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by JAMES TILLINGHAST, Esq., of counsel for said Zechariah Chafee:

Int. 1. What is your name, age, residence, and occupation?

472 Ans. John H. Bongartz; age, forty-nine; residence, East Providence; occupation, law business.

Int. 2. Did you formerly occupy an office with Andrew B. Patton, Esq., the solicitor of record for William Sprague in this case; if so, where was the office and between what dates did you so occupy it?

Ans. I did. It was, I believe, 14 Westminster street. I believe I came there in August, 1882, and stayed there about six months.

Int. 3. Were you knowing to the facts that during that time the portion of the Sprague estate known as Canonchet, in South Kingston, was sold at auction by Mr. Chafee and purchased by Francis D. Moulton, the complainant in this case, and of the hearing in our supreme court of the application by Mr. Chafee against Mr. Moulton and William Sprague respecting that sale and purchase; and, if so, state what you know and your means of knowledge?

Ans. I know that the estate was sold by Mr. Chafee and purchased by Mr. Moulton, the complainant in this suit. I heard of the hearing in the supreme court referred to. I was there. I know that the

estate was sold. I saw it in the newspapers, heard it talked about, and even Mr. Patton told me.

Int. 4. Did you see in the supreme court at that hearing the attorney or solicitor from New York who then appeared there and took part in behalf of Mr. Moulton?

Ans. I did.

Int. 5. Did you learn his name or have you learned it at any time since?

Ans. At the time I did not learn his name; afterwards I learned it, but have forgotten it now.

Int. 6. Had you at any time prior to that hearing in the supreme court seen that same gentleman who thus appeared in court in behalf of Mr. Moulton in conference with Mr. Patton; if so, did you hear anything said between them? And, if so, please state what was said.

(A. B. Patton, Esq., objects to this question, on the ground that it is immaterial, irrelevant, and inadmissible by every principle of law.)

473 Ans. I never did hear that man say anything to Mr. Patton except good morning, or good afternoon, or how do you do.

Int. 7. Had you shortly prior to that hearing in the supreme court seen that same gentleman who thus appeared in court at that hearing in behalf of Mr. Moulton in the office then occupied, as you have stated, by yourself and Mr. Patton; and, if so, did you then hear him make any statement or remark respecting this Canonchet estate and Mr. Chafee? And, if anything, please state what he said.

(A. B. Patton objects to this question, on the same grounds stated in his objection to Int. 6.)

Ans. On the morning of the trial I saw the young man in the office. Mr. Patton wasn't in, and this young man says to me (I did not know who this young man was at the time), "I don't believe we can keep that Canonchet, but we can bother old Chafee and that drunken postmaster;" and I said to him, "You will lose any case you got in Rhode Island; you better try your cases somewhere else, where justice prevails."

Int. 8. Was this young man referred to in your last answer the same gentleman whom you afterwards saw in the supreme court at the hearing above referred to, appearing there for Mr. Moulton?

Ans. It was.

JOHN H. BONGARTZ.

Subscribed by said John H. Bongartz in my presence this second day of January, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

Circuit Court of the United States, Rhode Island District.

I, Isaac H. Southwick, Jr., the examiner named in the commission hereunto attached, hereby certify that the aforenamed Zechariah

Chafee personally appeared before me on the first and fourth days of January, A. D. 1884, at eleven o'clock in the forenoon of each day, at the residence of said Chafee, No. 5 Cooke street, in this city of
474 Providence, in said district; that the aforenamed William H. Hall personally appeared before me on the first day of January, A. D. 1884, at three o'clock in the afternoon, at the office of C. Frank Parkhurst, Esq., No. 27 Custom-House street, room 8, in said city of Providence; that the aforenamed Daniel T. Lyman personally appeared before me on the first and second days of January, A. D. 1884, at three o'clock in the afternoon of each day, at said office of C. Frank Parkhurst, Esq., and that the aforenamed John H. Bongartz personally appeared before me on the first and second days of January, A. D. 1884, at three o'clock in the afternoon of each day, at said office of C. Frank Parkhurst, Esq.; that then and there, respectively, as aforesaid, the said Zechariah Chafee, William H. Hall, Daniel T. Lyman, and John H. Bongartz, after being sworn to testify the truth, the whole truth, and nothing but the truth, did each severally and respectively give his foregoing deposition; that said depositions were severally reduced to writing by me in the presence of each of said deponents, respectively, except a part of the deposition of said Zechariah Chafee, which said part, having been previously reduced to writing by me by agreement of counsel, was by me read over to said Chafee in his presence and hearing and by him assented to; that I determined that said depositions should be taken in the form of specific questions and answers; that said depositions, when completed, were read over to or by said deponents, respectively, and that each of said deponents signed his respective deposition in my presence and in the presence of such of the parties or counsel as did attend.

I further certify that the Exhibits A, B, C, D, E, F, annexed to the foregoing deposition of said Zechariah Chafee and authenticated by my signature, are true copies of the documents referred to in said deposition, and that said exhibits were hereunto attached by me.

I further certify that the foregoing depositions of said Chafee, Hall, Lyman, and Bongartz were taken at the request of said Chafee, to be used in his behalf at the hearing of a suit in equity now pending in said circuit court, wherein Francis D. Moulton is complainant and said Chafee and others are respondents; that the counsel of said Chafee notified the counsel of record of the other parties to said suit of the time and place of taking said depositions, as
475 appears by the notification and indorsements of counsel thereon hereunto attached, and that the counsel of said Chafee furnished me with a copy of the bill and answer in said suit prior to the taking of said depositions.

I further certify that I am not of counsel nor the solicitor of any party to said suit, and that I am not interested in any way whatsoever in the event of said suit.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Depositions of witnesses produced, sworn, and examined the

eleventh, fourteenth, and fifteenth days of January, A. D. 1884, at Providence, R. I., under and by virtue of a commission, hereunto attached, issued out of the circuit court of the United States within and for the Rhode Island district, in a suit in equity now pending in said court, wherein Francis D. Moulton is complainant and Zechariah Chafee and others are respondents, as follows:

Deposition of Clarence H. Guild.

CLARENCE H. GUILD, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of William Sprague, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by ANDREW B. PATTON, Esq., of counsel for said William Sprague:

Int. 1. What is your name, age, and residence?

Ans. Clarence H. Guild; thirty-seven years; Providence, R. I.

Int. 2. Are you secretary of the A. & W. Sprague Manufacturing Company; and, if so, how long have you been such; and have you the corporate records of said company in your possession or control; and, if so, will you produce them?

Ans. I am and have been secretary of the A. & W. Sprague
476 Manufacturing Company since Feb. 12, 1876. I have the corporate records and I now produce them.

Int. 3. State when the A. & W. Sprague Manufacturing Company was organized, the number of shares of the capital stock issued by the company, and who were the holders of said stock Oct. 31, 1873.

(James Tillinghast, Esq., of counsel for Zechariah Chafee, one of the respondents in said cause, objects to this question as immaterial.)

Ans. Organized July 15, 1865. Ten thousand shares of the capital stock were issued by the company. The holders of said stock were:

Mary Sprague	1,341	shares.
Fanny Sprague	1,553	"
Amasa Sprague	2,526	"
William Sprague	2,526	"
Sarah Hoyt	389	"
Susan S. Hoyt, Wm. Sprague, guardian	440	"
Edwin Hoyt, Jr., Wm. Sprague, guardian	439	"
William S. Hoyt, Wm. Sprague, guardian	439	"
A. & W. Sprague Manufacturing Company	347	"
	10,000	"

Int. 4. Was the stockholders above referred to the same at the time of the holding of the corporate meetings of the dates of Oct. 31, 1873, Nov. 28, Dec. 1, Dec. 8, 9, 12, 18, 20, 23, 24, 26, 1873, and

of the meeting of April 6, 1874, and did the parties hold the same amount of stock at these times?

Ans. They were, and they held the same amount of stock down to Dec. 22, 1873, when William Sprague, Amasa Sprague, Mary Sprague, and the A. & W. Sprague Manufacturing Company, respectively, transferred their stock to Fanny Sprague, and Fanny Sprague transferred to Mary Sprague in trust for their respective creditors.

Int. 5. Prior to the meeting of Oct. 31, 1873, whose duty
477 was it, under the by-laws of the company, to execute the deeds, leases, mortgages, and like instruments of the company?

Ans. It was the duty of the president.

Int. 6. Have you in your possession any proxy or letter of attorney given by either of the stockholders of this company to Amasa Sprague to vote or to represent parties stockholders at either of the corporate meetings of the company held at the times specified in Int. 4 above; if so, will you produce them and annex copies of them to this deposition?

Ans. I think I have, and will annex copies to this deposition.

(The copies furnished by the witness to the examiner are hereunto annexed, marked "Exhibits G, H, I, J, K, L, M.")

Int. 7. I mean the above interrogatory to include also any proxy authorizing Amasa to act for William Sprague or any of the stockholders in the call of any of the meetings above referred to.

Ans. If there is anything I will get it.

Int. 8. Have you among your papers any notices of calls for the meetings referred to in Int. 4 above, or letter-press copies of the calls of any of said meetings issued by any of the stockholders of the said company; if so, will you produce all such notices issued and letter-press copies of the said calls and annex copies of the same to this deposition and mark them "Direct Exhibits N, O, P, Q, R, S, T?"

Ans. I have and will annex copies.

(The copies furnished to the examiner by witness are hereto annexed, marked as stated in the question,)

Int. 9. Will you annex a copy of the record of corporate meetings of the said company, commencing with the record of the meeting of Oct. 31, 1873, and including all the record of the corporate meetings held between that date and the sixth day of April, 1874, including the record of the corporate meeting of April 6, 1874, and also a copy of the by-laws of said company and a copy of the act of incorporation of said company?

Ans. I will.

(The copies of said records furnished to the examiner are hereto annexed, marked "Exhibits U No. 1, U No. 2, U No. 3.")

478 Int. 10. Who was the president and treasurer of the said company from its organization to April 6, 1874?

Ans. William Sprague was president and Amasa Sprague was treasurer of said company from its organization up to Oct. 31, 1873, and from Oct. 31, 1873, Amasa Sprague was president and treasurer.

Int. 11. Will you produce and annex copies of all papers in your possession relating to the call or holding of any of the meetings of the said corporation referred to in direct Int. 4 above?

Ans. I will.

CLARENCE H. GUILD.

Subscribed by said Clarence H. Guild in my presence this eleventh day of January, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

The foregoing direct examination was taken subject to all objections as if specifically noted.

I. H. SOUTHWICK, JR., *Examiner.*

Arthur D. Payne, Esq., of counsel for Francis D. Moulton, complainant in said cause, was present at the taking of the foregoing deposition, but asked no questions.

I. H. SOUTHWICK, JR., *Examiner.*

EXHIBIT G.

A true copy. Attest: I. H. Southwick, Jr., examiner.

Know all men by these presents I, William Sprague, of the city and county of Providence, in the State of Rhode Island, have constituted, ordained, and made and in my stead and place put, and by these presents do constitute, ordain, and make and in my stead and place put, Amasa Sprague, of Cranston, in said county and State, to be my true, sufficient, and lawful attorney, for me and in
479 my name and stead to ask, demand, and receive of and from any person or persons, firms, and corporations any and all sums of money that may be due, owing, or payable to me, holding the net amount thereof subject to my order and for my use; to draw checks; to sign notes; to draw drafts; to endorse any check, note, and draft; to sign, seal, and as and for my act and deed to acknowledge and deliver any lease, deed, contracts, and obligations, and generally in all things to attend to, do, and perform all my individual business.

Also for me and in my name, as a member of the firm of A. & W. Sprague, and also for me and in my name, either as a member or officer of and in the corporation known as the "A. & W. Sprague Manufacturing Company," to sign, seal, and as and for my act and deed to acknowledge and deliver any deed, lease, bond, or other paper, hereby giving and hereby granting unto my said attorney full power and authority in and about the premises; and to use all due means, course, and process in the law for the full, effectual, and complete execution of the business aforedescribed; and in my name to make and execute due acquittance and discharge; and for the premises to appear and the person of me, the constituent, to represent

before any Governor, judges, justices, officers, and ministers of the law whatsoever in any court or courts of judicature, and there, on my behalf, to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relating to the premises; also to submit any matter in dispute respecting the premises to arbitration or otherwise, with full power to make and substitute for the purposes aforesaid one or more attorneys under my said attorney and the same again at pleasure to revoke, and generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises as fully, amply, and effectually to all intents and purposes as I, the said constituent, if present ought or might personally, although the matter should require more special authority than is herein comprised, I, the said constituent, ratifying, allowing, and holding firm and valid all and whatsoever my said attorney or his substitutes shall lawfully do or cause to be done in and about the premises by virtue of these presents.

480 In witness whereof I have hereunto set my hand and seal this twenty-second day of July, in the year of our Lord one thousand eight hundred and fifty-nine (1859).

WM. SPRAGUE. [SEAL.]

Signed, sealed, and delivered in presence of us:
HENRY MARTIN.
DEXTER THURBER.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } ss:
County of Providence, }

Be it known that in the city of Providence, in the county and State aforesaid, on the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and fifty-nine, before me, Henry Martin, a public notary for said county of Providence, personally appeared William Sprague and acknowledged the within letter of attorney by him signed to be his free act and deed for the uses and purposes therein expressed.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, at said city of Providence, the day and year above written.

[L. S.] HENRY MARTIN,
Public Notary.

EXHIBIT H.

A true copy. Attest: I. H. Southwick, Jr., examiner.

PROVIDENCE, *Octo.* 31, 1873.

At the meeting of the A. & W. Sprague M'f'g Co. to be held at 8 o'clock p. m. Amasa Sprague is authorized to vote on our respective stock concerning all questions that may be presented.

W. SPRAGUE.
FANNY SPRAGUE.

481 EXHIBIT I.

A true copy. Attest: I. H. Southwick, Jr., examiner.

Know all men by these presents that I, William Sprague, do hereby make, constitute, and appoint Amasa Sprague to be my true and lawful attorney, for me and in my name, place, and stead to vote as my proxy at any meeting of the stockholders of the A. & W. Sprague Man'f'g Company according to the number of votes I should be entitled to if then personally present, with full power of substitution and revocation, until this power is revoked by me.

Witness my hand and seal, at Providence, the twenty-eighth day of November, 1873.

WM. SPRAGUE. [SEAL.]

Witness:
GEORGE HARRIS.

EXHIBIT J.

A true copy. Attest: I. H. Southwick, Jr., examiner.

Know all men by these presents that I, the undersigned, stockholder in the A. & W. Sprague Man'f'g Co., do hereby appoint Amasa Sprague my true and lawful attorney, with power of substitution, for me and in my name to vote at the meeting of the stockholders in said company to be held at # 3 Exchange Place Dec. 8th, '73, or at any adjournment thereof, with all the powers I should possess if personally present, hereby revoking all previous proxies.

Prov., Dec. 8th, 1873.

MARY SPRAGUE. [SEAL.]

Witness:
GEORGE HARRIS.

482 EXHIBIT K.

A true copy. Attest: I. H. Southwick, Jr., examiner.

Know all men by these presents that I, the undersigned, stockholder in the A. & W. Sprague Man'f'g Co., do hereby appoint Amasa Sprague my true and lawful attorney, with power of substitution, for me and in my name to vote at the meeting of the stockholders in said company to be held at # 3 Exchange Place Dec. 8th, or at any adjournment thereof, with all the powers I should possess if personally present, hereby revoking all previous proxies.

Prov., Dec. 8th, 187–.

FANNY SPRAGUE. [SEAL.]

Witness:
GEORGE HARRIS.

EXAMINER'S NOTE.—In the absence of full date to the foregoing, I subjoin the following, which appears indorsed as a file-mark:

Fanny Sprague, proxy to Amasa Sprague. Dec. 8, '73.

EXHIBIT L.

A true copy. Attest: I. H. Southwick, Jr., examiner.

Know all men by these presents that I, Fanny Sprague, trustee, do hereby make, constitute, and appoint Amasa Sprague my true and lawful attorney, for me and in my name, place, and stead to vote as my proxy at any meeting of the stockholders of the A. & W. Sprague Manufacturing Company according to the number of votes I should be entitled to if then personally present, with full power of substitution and revocation.

Witness my hand and seal, at Providence, the twenty-third day of December, 1873.

FANNY SPRAGUE, *Trustee.* [SEAL.]

Witness:

——— ———.

483 EXHIBIT M.

A true copy. Attest: I. H. Southwick, Jr., examiner.

Know all men by these presents that I, Mary Sprague, trustee, do hereby make, constitute, and appoint Amasa Sprague my true and lawful attorney, for me and in my name, place, and stead to vote as my proxy at any meeting of the stockholders of the A. & W. Sprague Manufacturing Company according to the number of votes I should be entitled to if then personally present, with full power of substitution and revocation.

Witness my hand and seal, at Providence, the twenty-third day of December, 1873.

MARY SPRAGUE. [SEAL.]

Witness:
Z. CHAFEE.

EXHIBIT N.

A true copy. Attest: I. H. Southwick, Jr., examiner.

OFFICE OF THE A. & W. SPRAGUE MANUFACTURING CO.,
PROVIDENCE, R. I., *Octo.* 28, 1873.

Mr. Charles Greene, sec'y of the A. & W. Sprague M'f'g Co., Providence, R. I.

DEAR SIR: We, the undersigned, holders of more than two-fifths of the capital stock, hereby request you to call a special meeting of the A. & W. Sprague M'f'g Co. for the purpose of altering the by-laws of the company, the adoption of new by-laws, and such other business as may properly come before the corporation.

Yours truly,

FANNY SPRAGUE.
MARY SPRAGUE.
AMASA SPRAGUE.

484 EXHIBIT O,

Containing the Notices Issued to the Several Stockholders of the Meeting of October 31, 1873.

True copies. Attest: I. H. Southwick, Jr., examiner.

OCTOBER 28*th*, (187)3.

Mrs. Fanny Sprague.

MADAME: In compliance with the request of more than two-fifths of the stockholders of the A. & W. Sprague M'f'g Co. to call a special meeting of the company, notice is hereby given that a special meeting of the company will be holden at their office, No. 3 Exchange Place, Providence, R. I., on Friday, October 31, 1873, at 11 o'clock a. m.

Yours truly, CHARLES GREENE, *Sec'y.*

OCTOBER 28*th*, (187)3.

Mrs. Mary Sprague.

MADAME: In compliance with the request of more than two-fifths of the stockholders of the A. & W. Sprague M'f'g Co. to call a special meeting of the company, notice is hereby given that a special meeting of the company will be holden at their office, No. 3 Exchange Place, on Friday, October 31, 1873, at 11 o'clock a. m.

Yours truly, CHARLES GREENE, *Sec'y.*

OCTOBER, 28*th*, (187)3.

Mr. William Sprague (for self & as guardian), Providence, R. I.

DEAR SIR: In compliance with the request of more than two-fifths of the stockholders of the A. & W. Sprague M'f'g Co. to call a special meeting of the company, notice is hereby given that a special meeting of the company will be holden at their
485 office, No. 3 Exchange Place, on Friday, October 31st, 1873, at 11 o'clock a. m.

Yours truly, CHARLES GREENE.

OCTOBER 28*th*, (187)3.

Mr. Wm. S. Hoyt, care of Mess. Hoyt, Sprague & Co., New York.

DEAR SIR: In compliance with the request of more than two-fifths of the stockholders of the A. & W. Sprague M'f'g Company to call a special meeting of the company, notice is hereby given that a special meeting of the company will be holden at their office, No. 3 Exchange Place, Prov., R. I., on Friday, October 31, 1873, at eleven o'clock a. m.

Yours truly, CHARLES GREENE, *Sec'y.*

OCTOBER 28*th*, (187)3.

Mrs. Susan S. Francklyn, *née* Hoyt, No. 3 Bowling Green, New York.

MADAM: In compliance with the request of more than two-fifths

of the stockholders of the A. & W. Sprague M'f'g Company to call a special meeting of the company, notice is hereby given that a special meeting of the company will be holden at their office, No. 3 Exchange Place, Prov., R. I., on Friday, October 31, 1873, at eleven o'clock a. m.

Yours truly, CHARLES GREENE, *Sec'y.*

OCTOBER 28*th*, (187)3.

Mr. Amasa Sprague, Providence, R. I.

DEAR SIR: In compliance with the request of more than two-fifths of the stockholders of the A. & W. Sprague M'f'g Company to call a special meeting of the company, notice is hereby
486 given that a special meeting of the company will be holden at their office, No. 3 Exchange Place, on Friday, October 31, 1873, at eleven o'clock a. m.

Yours truly, CHARLES GREENE, *Sec'y.*

OCTOBER 28, (187)3.

Mrs. Sarah H. Lee, *née* Hoyt, care Mess. Frazer & Lee, N. Y.

MADAM: In compliance with the request of more than two-fifths of the stockholders of the A. & W. Sprague M'f'g Company to call a special meeting of the company, notice is hereby given that a special meeting of the company will be holden at their office, No. 3 Exchange Place, on Friday, October 31, 1873, at eleven o'clock a. m.

Yours truly, CHARLES GREENE, *Sec'y.*

OCTOBER 28TH, (187)3.

Mr. Edwin Hoyt, Jr., care Mess. Hoyt, Sprague & Co., New York.

DEAR SIR: In compliance with the request of more than two-fifths of the stockholders of the A. & W. Sprague M'f'g Company to call a special meeting of the company, notice is hereby given that a special meeting of the company will be holden at their office, No. 3 Exchange Place, Prov., R. I., on Friday, October 31, 1873, at eleven o'clock a. m.

Yours truly, CHARLES GREENE, *Sec'y.*

EXAMINER'S NOTE.—The foregoing eight notices, dated Oct. 28, (187)3, appear as letter-press copies in the A. & W. Sprague Manufacturing Company's Letter Book No. 25, upon pp. 567, 568, 569, 570, 571, 572, 573–4 (double copy), and 575.

487 EXHIBIT P.

A true copy. Attest: I. H. Southwick, Jr., examiner.

OFFICE OF THE A. & W. SPRAGUE MANUFACTURING CO.,
PROVIDENCE, R. I., *December 4th*, 1873.

Chas. Greene, Esq., secretary of the A. & W. Sprague Man'f'g Co.

DEAR SIR: You are hereby requested to call a special meeting of the stockholders of this company, to be held at this office, No. 3 Ex-

change Place, in the city of Providence, on the 8th day of December, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick Company for supplying this company with stock to run its mills and convert the cloth into prints, by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said Quidnick Company, for a satisfactory consideration, in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before the meeting.

Yours respect'y, AMASA SPRAGUE,
WILLIAM SPRAGUE,
By his att'y, AMASA SPRAGUE,

Representing ⅔ or More of the Capital Stock of the A. & W. S. M'f'g Co.

EXHIBIT Q.

Containing the notices issued to the several stockholders of the meeting of Dec. 8, 1873.

True copies. Attest: I. H. Southwick, examiner.

DECEMBER 4, (187)3.

A meeting of the A. & W. Sprague M'f'g Co. will be held at this office, No. 3 Exchange Place, in the city of Providence, on
488 the 8th day of Dec'r, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick Company for supplying this company with stock to run its mills and convert the cloths into prints by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said Quidnick Company for a satisfactory consideration in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before the meeting.

Yours truly, CHARLES GREENE, *Sec'y.*

To Mrs. Susan S. Francklyn, New York.

DECEMBER 4, (187)3.

A meeting of the A. & W. Sprague M'f'g Co. will be held at this office, No. 3 Exchange Place, in the city of Providence, on the 8th day of Dec'r, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick Company for supplying this company with stock to run its mills and convert the cloth into prints by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said Quidnick Company for a satisfactory consideration in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before the meeting.

Yours truly, CHARLES GREENE, *Sec'y.*

To Mr. W. S. Hoyt, New York.

DECEMBER 4, (187)3.

A meeting of the A. & W. Sprague M'f'g Co. will be held at this office, No. 3 Exchange Place, in the city of Providence, on the 8th day of Dec'r, 1873, at 11½ o'clock a. m., to take into consid-
489 eration the propriety of making a contract with the Quidnick Company for supplying this company with stock to run its mills and convert the cloths into prints by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said Quidnick Company for a satisfactory consideration in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before the meeting.

Yours truly, CHARLES GREENE, *Sec'y.*

To Mr. E. Hoyt, Jr., New York.

DECEMBER 4, (187)3.

A meeting of the A. & W. Sprague M'f'g Co. will be held at this office, No. 3 Exchange Place, in the city of Providence, on the 8th day of Dec'r, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick Company for supplying the company with stock to run its mills and convert the cloths into prints by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said Quidnick Co. for a satisfactory consideration in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before the meeting.

Yours truly, CHARLES GREENE, *Sec'y.*

To Mrs. Sarah H. Lee, New York.

DECEMBER 4, (187)3.

A meeting of the A. & W. Sprague M'f'g Co. will be held at this office, No. 3 Exchange Place, in the city of Providence, on the 8th day of Dec'r, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick Company for supplying the company with stock to run its mills and convert the cloths into prints by executing a lease of the mills and works
490 of this company, or otherwise to obtain the assistance of said Quidnick Co. for a satisfactory consideration in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before the meeting.

Yours truly, CHARLES GREENE, *Sec'y.*

To Hon. Wm. Sprague, for self & as g'd'n, Prov., R. I.

DECEM. 4TH, (187)3.

A meeting of the A. & W. Sprague Manuf'g Co. will be held at this office, No. 3 Exchange Place, in the city of Providence, on the 8th day of December, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick

Company for supplying this company with stock to run its mills and convert the cloth into prints, by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said Quidnick Company, for a satisfactory consideration, in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before this meeting.

Yours truly, CHARLES GREENE, *Sec'y.*

To Mrs. Mary Sprague, Prov., R. I.

DECEM. 4TH, (187)3.

A meeting of the A. & W. Sprague Manuf'g Co. will be held at this office, No. 3 Exchange Place, in the city of Providence, on the 8th day of December, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick Company for supplying this company with stock to run its mills and convert the cloth into prints, by executing a lease of the
491 mills and works of this company, or otherwise to obtain the assistance of said Quidnick Company, for a satisfactory consideration, in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before this meeting.

Yours respect'y, CHARLES GREENE, *Sec'y.*

To Mrs. Fanny Sprague, Prov., R. I.

DECEMBER 4TH, (187)3.

Mr. Amasa Sprague, present.

D'R SIR: A meeting of the A. & W. Sprague M'f'g Co. will be held at this office, No. 3 Exchange Place, in the city of Providence, on the 8th day of December, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick Company for supplying the company with stock to run the mills and convert the cloths into prints, by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said Quidnick Co., for a satisfactory consideration, in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before the meeting.

Yours truly, CHARLES GREENE, *Sec'y.*

EXAMINER'S NOTE.—The foregoing eight notices, dated December 4th, (187)3, appear as letter-press copies in the A. & W. Sprague M'f'g Company's Letter Book No. 25, upon pages 700, 701, 702, 703, 704, 705, 706, and 707.

492 EXHIBIT R.

A true copy. Attest: I. H. Southwick, Jr., examiner.

OFFICE OF THE A. & W. SPRAGUE MANUFACTURING CO.,
PROVIDENCE, R. I., *April 2nd*, 1874.

Hon. Wm. Sprague:

SIR: A special meeting of the A. & W. Sprague Manufacturing Company will be held at the office of the company, in the city of Providence, on the 6th inst., at 12 o'clock m., for the purpose of considering and acting upon the question named in the enclosed circular and the consideration and transaction of all other business that may properly come before the meeting.

Very respectfully yours, &c.,

CHARLES GREENE,
Sec'y of the A. & W. Sprague Man'f'g Co.

EXAMINER'S NOTE.—Enclosed in the manuscript containing the foregoing appears another manuscript as follows:

To the stockholders of the A. and W. Sprague Man'f'g Co.:

The special object of the meeting of the company notified by the accompanying notice is to consider and act upon the question of authorizing the president to execute a general assignment for the benefit of the creditors of the company.

EXHIBIT S.

A true copy. Attest: I. H. Southwick, Jr., examiner.

OFFICE OF THE A. & W. SPRAGUE MANUFACTURING CO.,
PROVIDENCE, R. I., *April 2nd*, 1874.

Wm. Sprague, guardian.

SIR: A special meeting of the A. & W. Sprague Manufacturing Company will be held at the office of the company, in the city of Providence, on the 6th inst., at 12 o'clock m., for the purpose of considering and acting upon the questions named in the en-
493 closed circular and the consideration and transaction of all other business that may properly come before the meeting.

Very respectfully yours, &c.,

CHARLES GREENE,
Sec'y of the A. & W. Sprague Man'f'g Co.

EXAMINER'S NOTE.—No circular appears enclosed, but the circular referred to is probably the same one referred to in Exhibit R, *ante*, page 137.

EXHIBIT T.

A true copy. Attest: I. H. Southwick, Jr., examiner.

OFFICE OF THE A. & W. SPRAGUE MANUFACTURING CO.,
PROVIDENCE, R. I., *April 2nd*, 1874.

Mr. Edwin Hoyt, Jr.

SIR: A special meeting of the A. & W. Sprague Manufacturing Company will be held at the office of the company, in the city of Providence, on the 6th inst., at 12 o'clock m., for the considering and acting upon the questions named in the enclosed circular and the consideration and transaction of all other business that may properly come before the meeting.

Very respectfully yours, &c.,

CHARLES GREENE,
Sec'y of the A. & W. Sprague M'f'g Co.

EXAMINER'S NOTE.—Enclosed in the manuscript containing the foregoing appears another manuscript as follows:

To the stockholders of the A. and W. Sprague Man'f'g Co.:

The special object of the meeting of the company notified by the accompanying notice is to consider and act upon the question of authorizing the president to execute a general assignment for the benefit of the creditors of the company.

494 EXAMINER'S NOTE.—Attached to the foregoing, to parts of this exhibit, appears another manuscript as follows:

Hon. William Sprague.

SIR: The undersigned have received notices of a meeting of the stockholders of the A. & W. Sprague Manufacturing Company, one of which is hereto annexed, with the circular enclosed. As you have never transferred to us or in any way accounted to us for the shares of stock in the A. & W. Sprague Manufacturing Company which you held for us as guardian of our several estates in Rhode Island during our minority and are still liable to account to us for the same or the value or proceeds thereof, with all accretions thereon, and as we have no means of knowing whether duplicate notices have been sent to you, we hereby inform you that the meeting of said corporation is to be held at the office of said corporation, in the city of Providence, on the sixth day of April, 1874, at 12 o'clock m., in order that you may attend, in person or by attorney, and act in the matter as you may be advised. We never have become stockholders of said corporation and cannot act or vote upon said shares of stock and have no interest to protect therein. Our claim is against yourself and the sureties on your guardianship bonds. We do not take upon ourselves nor propose to relieve you from any responsibility for what

has been done or for what may be done at the corporation meetings.

April 6th, 1874.

WM. S. HOYT,
By His Attorney-in-Fact, Thomas A. Jenckes.
SUSAN G. FRANCKLYN &
CHARLES G. FRANCKLYN,
By Their Attorney-in-Fact, Thomas A. Jenckes.
EDWIN HOYT, JR.,
CHARLES G. FRANCKLYN AND
WM. S. HOYT,
His Committee, by Their Attorney-in-Fact, Thomas A. Jenckes.

495 EXHIBIT U No. 1,

Being a Transcript of the Records of the A. & W. Sprague Manufacturing Company from the Meeting of Oct. 31, 1873, *to that of April* 6, 1874, *Both Included.*

A true copy. Attest: I. H. Southwick, Jr., examiner.

OFFICE OF THE A. & W. SPRAGUE M'F'G CO.,
No. 3 EXCHANGE PLACE, PROVIDENCE. *October* 31*st*, 1873.

Pursuant to call issued by the secretary at the request of Fanny Sprague, Mary Sprague, & Amasa Sprague (representing more than two-fifths of the capital stock) a special meeting of this Company was held at their office this day, at which the following stockholders were represented, viz:

Fanny Sprague,	1,553 shares,	by proxy to Amasa Sprague.
Mary Sprague,	1,341 "	" Chas. G. Francklyn.
Amasa Sprague,	2,526 "	in person.
William Sprague,	2,526 "	by proxy to Amasa Sprague.
Total,	7,946 shares.	

Meeting called to order, treasurer in chair.

Reading of records of last meeting was, on motion, dispensed with.

It was—

Voted, That article two (2) of the by-laws be, and the same is hereby, repealed.

Voted, That the following be adopted as article 2 of the by-laws, viz:

It shall be the duty of the president to preside at all stockholders' meetings and to sign all certificates of stock.

Voted, That article three (3) of the by-laws be amended by striking out the following words in the last paragraph, viz., "subject to the provisions of article two (2)" and "located and carried on in the town of Cranston," so that the said paragraph as amended shall read as follows: "He shall also have the business management of the property and affairs of the company."

496 Voted, That articles eleven (11) and twelve (12) of the by-laws, as passed at meeting of January 5th, 1867, be, and the same are hereby, repealed.

Voted, That article five (5) of the by-laws, as originally accepted by the company, be, and the same is hereby, declared to be in full effect, all amendments to same having, by vote just taken, been repealed.

A written communication was received from the Honl. William Sprague resigning "the presidency of the company and all connection with its management;" and, on motion, such resignation was accepted.

Mr. Amasa Sprague was unanimously elected to fill the vacancy occasioned by said resignation.

It was—

Voted, That the treasurer of the company be, and he hereby is, authorized and directed to execute on behalf of the company and affix the seal of the company to a conveyance of all the estate, real and personal, of the company to Rufus Waterman, James Y. Smith, and Henry Howard, trustees, to secure the payment of the notes of the company to the amount of twelve millions of dollars, to be delivered by the treasurer to the trustees, to be used by them in funding the outstanding debts and liabilities of the company. A draft of said conveyance, before engrossment, has been submitted to the company at this meeting, and is approved.

Voted, That this meeting be kept open, to assemble at the call of the president.

Attest: CHARLES GREENE, *Sec'y, &c.*

PROVIDENCE, R. I., *November 28th*, 1873.

The following-named stockholders, representing seven thousand nine hundred forty-six shares, assembled in stockholders' meeting this day, at the call of the president.

Present: William Sprague, Amasa Sprague, Fanny Sprague, and Mary Sprague. The secretary not being present, George Harris was appointed secretary "*pro tem.*"

497 Voted, That whereas circumstances have prevented the execution of the deed of mortgage above authorized to be made to James Y. Smith, Rufus Waterman, and Henry Howard, Amasa Sprague, treasurer, is hereby authorized to execute a deed of mortgage to Rufus Waterman, Amos D. Lockwood, and George C. Nightingale, as trustees, to secure the payment of the notes of the company to the amount of fourteen millions of dollars, which said deed of mortgage has been examined and approved, and as such treasurer to sign the same on behalf of the corporation and affix the corporate seal thereto.

Voted, That this meeting be kept open, to assemble at the call of the president.

Attest: GEORGE HARRIS,
Secretary pro tem.

PROVIDENCE, R. I., *Dec.* 1*st*, 1873.

The following-named stockholders, representing seven thousand nine hundred forty-six shares, assembled in stockholders' meeting this day, at the call of the president.

Present: Amasa Sprague, William Sprague, by Amasa Sprague, attorney; Fanny Sprague, and Mary Sprague. The secretary not being present, George Harris was appointed secretary *pro tem.*

Voted, Whereas the persons named as trustees in the deed of mortgage authorized to be executed on the 28th day of November, A. D. 1873, have up to this date failed to accept said trust; and whereas it is desirable that the creditors of this company should have their debts secured upon the property of the company without further delay, therefore Amasa Sprague, treasurer, be, and he is hereby, authorized and hereby empowered to execute for and on behalf of the corporation the deed of mortgage dated Nov. 1st, 1873, to Zechariah Chafee, as trustee, the draft of which is presented and approved; and the said Amasa Sprague, treasurer, is hereby directed to affix the corporate seal to the same, and to acknowledge and deliver the said deed to Zechariah Chafee for the uses and purposes therein declared.

Voted, That Amasa Sprague, treasurer, be, and he is hereby,
498 authorized to transfer to Zechariah Chafee, when the trust mortgage dated November 1st, 1873, above authorized to be executed and delivered to him, shall have been executed and delivered, any and all shares of capital stock held by this corporation in any other corporation by way of pledge and collateral security to secure the performance of the conditions of said trust mortgage.

Attest: GEORGE HARRIS,
Secretary pro tem.

OFFICE OF THE A. & W. SPRAGUE MAN'F'G CO.,
PROVIDENCE, *December* 8, 1873.

Pursuant to notice issued by the secretary under date of December 4, 1873, at the request of Amasa Sprague & Wm. Sprague, "representing two-fifths or more of the capital stock of the Co.," for a special meeting of the A. & W. Sprague M'f'g Co. this day, the meeting was called to order and the following stock found to be represented:

Amasa Sprague,	2,526	shares,	in person.
William Sprague,	2,526	"	do.
Fanny Sprague,	1,553	"	by proxy to Amasa Sprague.
Mary Sprague,	1,341	"	do. do.

On motion & vote, meeting was adjourned to Tuesday, December 9, 1873, at 8.30 p. m., same place.

Attest: CHARLES GREENE, *Sec'y.*

PROVIDENCE, *December* 9, '73.

Pursuant to adjournment, meeting was called to order by the president.

On motion and vote, the meeting was declared adjourned to Friday next, December 12, '73, at 8.30 p. m., same place.
Attest: CHARLES GREENE, *Sec'y.*

499 PROVIDENCE, *December* 12, 1873.

Pursuant to adjournment, meeting was called to order, when, upon motion & vote, it was declared adjourned to Thursday, December 18, '73, at 12.30 p. m., same place.
Attest: CHARLES GREENE, *Sec'y.*

OFFICE OF THE A. & W. SPRAGUE M'F'G CO.,
PROVIDENCE, R. I., *December* 18, 1873.

Pursuant to adjournment, a meeting of this company was held to-day and was called to order by the president, a majority of the stock being present or represented by proxy, & the call and notice of the original meeting having been as follows:

Call.

PROVIDENCE, *December* 4, 1873.

Charles Greene, Esq., secretary of the A. & W. Sprague M'f'g Co.

DEAR SIR: You are hereby requested to call a special meeting of the stockholders of this company, to be held at their office, No. 3 Exchange Place, in the city of Providence, on the 8th day of December, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick Company for supplying this company with stock to run its mills and convert the cloths into prints, by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said Quidnick Company, for a satisfactory consideration, in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before the meeting.

(Signed) AMASA SPRAGUE,
(Do.) WM. SPRAGUE,
By his att'y, AMASA SPRAGUE,
Representing ⅔ or More of the Capital Stock of the A. & W. Sprague M'f'g Co.

500 *Notice to Stockholders.*

PROVIDENCE, *Dec. 4th*, 1873.

A meeting of the A. & W. Sprague M'f'g Co. will be held at their office, No. 3 Exchange Place, in the city of Providence, on the 8th day of December, 1873, at 11½ o'clock a. m., to take into consideration the propriety of making a contract with the Quidnick Company for supplying this company with stock to run its mills and convert the cloths into prints, by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said

Quidnick Company, for a satisfactory consideration, in putting the mills and works of this company into operation, to ratify any previous proceedings of this corporation, and to transact any other business that may legally come before the meeting.

Yours truly,

(Signed) CHARLES GREENE, *Sec'y.*

To —— ——.

The following draft contract with the Quidnick Company was presented and read, viz:

It is agreed between the Quidnick Company and the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island, as follows:

That said Quidnick Company will from time to time furnish the said A. & W. Sprague Manufacturing Company the necessary means, stock, and supplies for running their mills and print works so long as this contract shall continue in force.

That said A. & W. Sprague Manufacturing Company will manufacture all such stock and supplies into printed goods, and consign the same as fast as manufactured, in the name of the Quidnick Company, to such commission-houses as may be agreed upon, for sale on account of said Quidnick Company; said stock and supplies and goods in process or manufactured at all times till sold to be and remain the property of said Quidnick Company.

That the proceeds of sales of said goods as received by said Quidnick Company shall be applied, first, to the payment of freight, insurance, and other expenses, and to the repayment of all
501 advances made by them as aforesaid, including a commission of one-quarter of one per cent. upon the amount of such advances for their trouble, and the balance of said proceeds shall from time to time be paid over to said A. & W. Sprague Manufacturing Company as its compensation for manufacturing.

And it is further agreed that this contract shall continue in force until terminated by thirty days' notice, in writing, from either party to the other party of its intention to terminate the same.

In testimony whereof said Quidnick Company has caused these presents to be signed and its corporate seal to be hereto affixed by —— ——, its —, for this purpose duly authorized, and said A. & W. Sprague Manufacturing Company has caused these presents to be signed and its corporate seal to be hereto affixed by —— ——, its —, for this purpose duly authorized, this — day of ——, A. D. 187–. Executed and delivered in presence of —— ——.

And thereupon it was unanimously voted that the same be approved, and our treasurer be, and hereby is, authorized and instructed to execute the same in behalf and under the seal of this company.

The records of the meetings of Octo. 31, 1873; November 28, 1873; December 1, 1873; December 8, 1873; December 9, 1873, & December 12, 1873, were read and approved; and thereupon it was unanimously voted that the proceedings of all said meetings and of all prior meetings of this company and all acts and doings thereunder be, and the same are hereby, ratified and confirmed.

Upon motion and vote, the meeting was declared adjourned to Saturday, Decem. 20, '73, at 12 o'clock, same place.
Attest: CHARLES GREENE, *Sec'y.*

OFFICE OF THE A. & W. SPRAGUE M'F'G CO.,
PROVIDENCE, R. I., *December* 20, '73.

Pursuant to adjournment, meeting was called to order by the president, & a majority of the stock found to be represented.
502 Upon motion and vote, the meeting was declared adjourned to Monday next, December 22, 1873, at 12.30 o'clock p. m., same place.
Attest: CHARLES GREENE, *Sec'y.*

OFFICE OF THE A. & W. SPRAGUE M'F'G CO.,
PROVIDENCE, R. I., *Decem.* 22, 1873.

Pursuant to adjournment, meeting was called to order by the president, and a majority of the stock found to be represented.
Upon motion and vote, the meeting was declared adjourned to Tuesday, December 23d, 1873, at 12.30 o'clock p. m., same place.
Attest: CHARLES GREENE, *Sec'y.*

OFFICE OF THE A. & W. SPRAGUE M'F'G CO.,
PROVIDENCE, R. I., *December* 23*d*, 1873.

Pursuant to adjournment, meeting was called to order by the president, and a majority of stock found to be represented.
Upon motion and vote, the meeting was declared adjourned to Wednesday, December 24, 1873, at same time and place.
Attest: CHARLES GREENE, *Sec'y.*

OFFICE OF THE A. & W. SPRAGUE M'F'G CO.,
PROVIDENCE, R. I., *December* 24, 1873.

Pursuant to adjournment, meeting was called to order by the president, and a majority of the stock found to be represented.
Upon motion and vote, the meeting was declared adjourned to Friday, December 26, 1873, at same time and place.
Attest: CHARLES GREENE, *Sec'y.*

503 OFFICE OF THE A. & W. SPRAGUE M'F'G CO.,
PROVIDENCE, R. I., *December* 26, '73.

Pursuant to adjournment, meeting was called to order by the president, and a majority of the stock found to be represented.
Upon motion and vote, the meeting was declared adjourned *sine die.*
Attest: CHARLES GREENE, *Sec'y.*

OFFICE OF THE A. & W. SPRAGUE M'F'G CO.,
NO. 3 EXCHANGE PLACE, PROVIDENCE, *April 6th*, 1874.

Pursuant to notices, with circulars enclosed, of which the following are true copies, viz: "A special meeting of the A. & W. Sprague M'f'g Co. will be held at the office of the company, in the city of

Providence, on the 6th inst., at 12 o'clock m., for the purpose of considering and acting upon the question named in the enclosed circular and the consideration and transaction of all other business that may properly come before the meeting. Signed, Chas. Greene, sec'y of the A. & W. Sprague M'f'g Co."

"To the stockholders of the A. & W. Sprague M'f'g Co.: The special object of the meeting of the company notified by the accompanying notice is to consider and act upon the question of authorizing the president to execute a general assignment for the benefit of the creditors of this company," one of which notices, with circular enclosed, was addressed to and mailed, postage paid, in accordance with the provisions of the by-laws, to each of the following stockholders, viz., Amasa Sprague, William Sprague, Mary Sprague, Fanny Sprague, all of Prov.; Wm. S. Hoyt, Susan G. Franklyn, Edwin Hoyt, Jr., & Sarah H. Lee, of New York, a meeting was held at the time and place in the notices specified.

Present: Amasa Sprague, Wm. Sprague, Fanny Sprague, and Mary Sprague, all representing 8,293 shares, being more than $\frac{2}{5}$ of capital stock.

504 Amasa Sprague, president, in the chair.

On motion, reading of records of last meeting was dispensed with.

A communication from Charles Greene, of which the following is a copy, viz: "Amasa Sprague, president A. & W. Sprague M'f'g Co. Dear Sir: Hereby I tender my resignation of the office of secretary of the A. & W. Sprague M'f'g Co., and respectfully request that you will present the same at the meeting of the company to be held on the 6th inst.," was received; and thereupon it was voted—

To accept the resignation of Mr. Greene as secretary, so tendered.

Thereupon George Harris was elected secretary of the corporation.

A communication addressed to Hon. William Sprague, one of the stockholders, of which the following is a copy, viz:

Hon. William Sprague.

SIR: The undersigned have received notices of a meeting of the stockholders of the A. & W. Sprague M'f'g Co., one of which is hereto annexed, with the circular enclosed. As you have never transferred to us or in any way accounted to us for the shares of stock in the A. &. W. Sprague Manufacturing Company which you held for us as guardian of our several estates in Rhode Island during our minority, and are still liable to account to us for the same or the value or proceeds thereof, with all accretions thereon, and as we have no means of knowing whether duplicate notices have been sent to you, we hereby inform you that the meeting of said corporation is to be held at the office of said corporation, in the city of Providence, on the sixth day of April, 1874, at 12 o'clock m., in order that you may attend in person or by attorney an(d) act in the matter as you may be advised. We never have become stockholders of said corporation, and cannot act or vote upon said shares of stock, & have no interest to protect therein. Our claim is against yourself and the

sureties on your guardianship bonds. We do not take upon
505 ourselves, nor propose to relieve you from any responsibility for what has been done or for what may be done at the corporation meetings.

April 6th, 1874.

WM. S. HOYT,
By His Attorney in Part (Fact), Thomas A Jenckes.
SUSAN G. FRANCKLYN &
CHARLES G. FRANKLYN,
By Their Attorney in Part (Fact), Thomas A. Jenckes.
EDWIN HOYT, JR.,
CHARLES G. FRANCKLYN, AND
WM. S. HOYT, *His Committee,*
By Their Attorney in Part (Fact), Thomas A. Jenckes.

—was presented by said Sprague and ordered to be placed on file.

It was moved & seconded that the corporation make to Zechariah Chafee a general assignment of all its estate for the benefit of all its creditors, and the deed, of which the following is a copy, viz:

This indenture, made this — day of April, A. D. eighteen hundred and seventy-four, by and between A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island and transacting business in the city of Providence, of the first part, and Zechariah Chafee, of said Providence, of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Company is now indebted or under liability, primary or secondary, in divers sums of money to divers persons, and is desirous of appropriating its estate and effects to and for the payment of the same:

Now, this indenture witnesseth: That the said A. & W. Sprague Manufacturing Company, for and in consideration of the said debts and liabilities, and also in consideration of the sum of one dollar to it paid by the said Zechariah Chafee, the receipt whereof is hereby acknowledged, by these presents doth grant, assign, bargain, sell, alien, release, and confirm unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all our right,
506 title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day of November, A. D. 1873, made by the grantor and others to the grantee, and in or to any and all estate, real, personal, or mixed, of every name and nature, wherever situate, not exempt from attachment by law:

To have and to hold the same, with all the privileges and appurtenances thereof, unto him, the said Zechariah Chafee, his heirs, executors, administrators, and assigns, in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply—

First. To the payment in full, if sufficient, otherwise ratably, of all the claims of creditors against us, the A. & W. Sprague M'f'g Co., which have been or shall within nine months from the first day of November, A. D. 1873, be brought in and extended for the term

of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same, under the provisions of said deed of mortgage dated November 1st, 1873, or of this or any other preceding instrument.

Secondly. The residue of said proceeds to apply in full, if sufficient, otherwise ratably, to the payment of all our other creditors.

And said trustee is hereby authorized and empowered and it shall be his duty to act faithfully for the interests of the creditors, and so as to obtain as prompt a settlement of their claims as practicable, and for that purpose he shall sell or dispose of any and all portions of the property conveyed to him by or under this or any preceding trust from time to time as soon as reasonably may be, consulting the best interests of the creditors in making such sales and disposition, to the end that he may pay and discharge in full, if the property be sufficient, otherwise ratably, the obligations to our creditors within a reasonable time; and the said trustee is further authorized to run said mills and print works or either or any of them, or to allow the grantor to run the same or any part thereof, if for the best interest of the creditors, the profits of the same being receivable by
507 the aforesaid grantee for the purposes aforesaid; and in case the same are thus run by him or otherwise he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him.

And the said party of the second part doth hereby accept said trust, and doth, in consideration thereof, covenant that he will faithfully execute said trust on behalf of the creditors herein provided for, so as to secure to them as early and full a payment upon their said claims as he shall reasonably be able to do.

In testimony whereof said A. & W. Sprague Manufacturing Company has caused these presents to be signed and its corporate seal to be hereto affixed by Amasa Sprague, its treasurer, for this purpose fully authorized, and said Zechariah Chafee has hereto set his hand and seal this — day of April, eighteen hundred and seventy-four.

Signed, sealed, and delivered in presence of—

—— ——.

STATE OF RHODE ISLAND, &c., } ss:
City and County of Providence, }

Be it known that in said city of Providence, this — day of April, A. D. 1874, before me, —— ——, a justice of the peace for the said city of Providence and a notary public for said State of Rhode Island, residing in said city of Providence, personally appeared Amasa Sprague, personally known to me to be the same person who executed the aforegoing instrument as treasurer, and in said capacity as treasurer acknowledged to me that he signed, sealed, executed, and delivered this said instrument as and that the same is his free and voluntary act and deed as such treasurer, and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company, for the uses and purposes therein mentioned and expressed.

In witness whereof I have hereunto set my hand and official seal, at said city of Providence, on this — day of ——, A. D. 1874.

—was presented as a suitable form for such assignment, and thereupon it was—

Voted, That our treasurer be, and is hereby, authorized
508 and instructed to execute, under our corporate seal, and deliver in behalf of this corporation such assignment or an assignment of all the estate of the corporation to said Zechariah Chafee in such form as he may be by counsel advised.

This meeting was not dissolved or adjourned, but left open for a future record, as directed by the counsel, Gardner, Thurston & Tillinghast.

G. HARRIS.

EXAMINER'S NOTE.—The last paragraph was written with a lead-pencil. No further record appears within the period covered by the question.

EXHIBIT U No. 2,

Comprising the By-Laws of the A. & W. Sprague Manufacturing Company.

A true copy: Attest: I. H. Southwick, Jr., examiner.

By-Laws of the A. & W. Sprague Manufacturing Company.

Article 1. The annual meetings of the stockholders for the election of the following officers, viz., a president, treasurer, and secretary, shall be holden at the office of the company, in the city of Providence, or in such other place in said city as may be designated by written or printed notice of such meeting, to be mailed, postage paid, and addressed by the secretary to each stockholder at their place of residence, or by the publication of such notice in one or more of the daily newspapers published in said city at least three (3) days prior to each meeting.

Elections may be by ballot or *viva-voce* vote, as the majority of the stock represented at the meeting may determine.

Special meetings of the stockholders shall be called by the secretary whenever requested by the president or in writing by the holders of two-fifths or more of the capital stock, and notice of the same shall be given in the manner provided for notices of annual meetings at least three days prior thereto. Any business may be transacted at any legal meeting without being specified in
509 the notice of the same: Provided, That the notices of annual meetings shall specify the purpose of electing officers.

Article 2. The president shall have the general management, control, superintendence, and direction of all the property and business affairs of the said corporation, subject, however, to the provisions of the act of incorporation, these by-laws, and the express instructions of the stockholders expressed by vote at any lawful meeting. It shall be his duty to preside at all stockholders' meetings, to

sign all certificates of stock, and to execute the deeds, leases, mortgages, and like instruments of the company.

EXAMINER'S NOTE.—In the margin appears the following: "Repealed and substitution made at meeting held Octo. 31, 1873. G." At that meeting the following was adopted as article 2: "It shall be the duty of the president to preside at all stockholders' meetings and to sign all certificates of stock." See Exhibit U, No. 1, page 140 of this deposition.

Article 3. The treasurer shall be the custodian of all moneys, valuable papers, books, and accounts of the company, receive all moneys that may be due to the same, make all disbursements in payment of demands against the company and of dividends declared by the same.

He shall sign all notes, checks, drafts, and acceptances issued by the company.

He shall keep full and accurate accounts of his receipts and disbursements and prepare for the use of the stockholders at each annual meeting, and as much oftener as called upon, statements showing the earnings and financial condition of the company. He shall also have [subject to the provisions of article 2] the business management of the property and affairs of the company [located and carried on in the town of Cranston].

EXAMINER'S NOTE.—In the margin, against the last sentence, appears the following: "Amended at meeting held Octo. 31, '73, by striking out the words as bracketed, viz., 'subject to provisions of article 2' and 'located and carried on in the town of Cranston.' G." See Exhibit U, No. 1, page 140 of this deposition.

510 Article 4. The secretary shall keep the minutes and records of the proceedings of the company and its officers, countersign all certificates of stock, make all transfers of stock, keep an accurate record of all issues and transfers of stock, prepare and send notices of meetings, and attend to such correspondence as may grow out of the action of the company and its officers. He shall also, subject to the provisions of article 2, employ, define the duties of, control and direct the clerks and other employees employed by the company in the Providence counting-room.

EXAMINER'S NOTE.—In the margin appears the following: "Repealed at meeting of Jan'y 5, '67."

Article 5. In case of the death, resignation, absence, or inability to serve of either of the officers of the company either of the other officers may assume and discharge the duties of such officer *pro tempore* until the cause of assuming the office is removed by another election or otherwise, and if more than one officer is present and capable under this by-law to discharge the duties of such office the priority of right and duty to assume the same shall be determined by the order in which such officers are in these by-laws named.

EXAMINER'S NOTE.—In the margin appears the following: "Amended at meeting of Jan'y 5 | 67; amendment of Jan'y 5 | 67,

repealed Octo. 31 | 73, so that art. 5 now stands as originally constructed."* See Exhibit U No. 1, page 140 of this deposition.

Article 6. The seal, of which an impression is hereon made, shall be the common seal of the company. [Seal.]

Article 7. Every stockholder shall have a certificate, under the seal of the company, signed by the president and countersigned by the secretary, certifying his property in the shares expressed by the certificate, and such certificates shall be numbered progressively from one upward. Transfers of stock may be made upon the transfer books of the corporation and signed by the holder or his authorized attorney on the surrender of the old certificate
511 in the following form, viz: Transfer No. —. For value received — hereby sell and transfer to —— — shares of the capital stock of the A. & W. Sprague Manufacturing Company. Dated this — day of ——, A. D. 18—. The transfers of all stock sold pursuant to the provisions of section 9 of the act of incorporation shall be signed by the treasurer.

Article 8. The stockholders shall declare and order to be paid an annual dividend of at least six per cent., if so much has been earned, and if so much has not been earned then of such percentage as has been earned, provided such percentage amounts to at least one per centum upon the amount of capital invested; and this article of the by-laws shall not be altered, amended, enlarged, modified, or repealed without the consent of all the stockholders.

Article 9. These by-laws, with the exception of article 8, may be amended, enlarged, modified, or repealed, in whole or in part, whenever the holders of a majority of the shares shall so vote.

EXAMINER'S NOTE.—In the margin appears the following: "For by-laws Nos. 10, 11, 12 see meeting of Jan'y 5, '67." Upon the records under that date appears the following:

Voted, on motion, That the following additional by-laws be adopted as by-laws Nos. 10, 11, & 12:

By-law No. 10. Article four of the by-laws of this company is hereby repealed.

By-law No. 11. It shall be the duty of the secretary to keep the minutes and records of the company, to prepare and send notices of the meetings, and to attend to such correspondence as may grow out of the action of the company at their called meetings.

By-law No. 12. After the word "officers," in article five, the by-law shall read: Except the secretary, whose duties are confined to article 11 of these by-laws.

EXAMINER'S NOTE.—In the margin of the foregoing transcript from the record of said meeting of January 5th appears the following: "By-laws Nos. 11 & 12 repealed at meeting of Octo. 31, 1873." See Exhibit U No. 1, page 140 of this deposition.

* For this amendment see article 12, page 156 of this exhibit.

512 EXHIBIT U No. 3,

Comprising the Act of Incorporation of the A. & W. Sprague Manufacturing Company.

A true copy. Attest: I. H. Southwick, Jr., examiner.

An act to incorporate the A. & W. Sprague Manufacturing Company.

It is enacted by the General Assembly as follows:

SECTION 1. Byron Sprague, William Sprague, and Amasa Sprague and their associates, successors, and assigns are hereby created a body corporate and politic, under and by the name of the A. & W. Sprague Manufacturing Company, for manufacturing and printing purposes, and by that name shall have perpetual succession and are made capable in law to have, possess, receive, hold, enjoy, and retain to them, their successors and assigns, estates and property, real, personal, and mixed, and the same to manage, let, grant, bargain, sell, convey, and dispose of at pleasure, to sue and be sued, plead and be impleaded, defend and be defended against in all courts of law and of equity and before all tribunals whatever, to make, have, and use a common seal, and the same to break, alter, and renew at pleasure, with power to make and put in execution all such by-laws and regulations as they may deem necessary for the government of said corporation not repugnant to law or this act of incorporation, and generally to do and execute all acts, matters, and things which may be necessary to carry into effect the powers and privileges herein granted.

SEC. 2. The capital stock of said corporation shall not exceed the sum of one million dollars (to be divided into such number of shares as shall be from time to time fixed upon by a vote of said corporation). Said shares shall not be assessable beyond the par value thereof.

SEC. 3. The par value of the shares in said corporation is hereby fixed at the sum of one hundred dollars each, and said shares are hereby declared to be personal property, and shall be transfer-
513 able on the surrender of the old certificates upon the books of said corporation in such form and manner as said corporation shall prescribe: Provided, however, That no stockholder in said corporation shall have the right to transfer his shares therein without first giving ten days' notice in writing of such intention and ten days' refusal thereof to said corporation at the lowest price at which he will sell to any other person, and if in such case said corporation elect to purchase said shares at said lowest price such stockholder shall, on the price being offered to him, convey said shares to said corporation. Said corporation shall issue certificates of said shares to the owners thereof, which shall be signed by the president and countersigned by the secretary of said corporation, and shall be recorded in a book provided for that purpose.

SEC. 4. There shall be an annual meeting of the stockholders of said corporation on the second Wednesday of April in each and

every year for the election of a president and secretary of said corporation and of such other officers as they may see fit, to hold their offices respectively for one year or until others are elected in their places; and said stockholders shall have power at any legal meeting to remove any officer of said corporation, and at any such meeting to fill any vacancy, however occasioned.

SEC. 5. Any failure to hold said annual meeting shall not affect or impair the validity of this act of incorporation, but the business of such meeting may be transacted at any legal meeting called for the purpose.

SEC. 6. Special meetings may be called and held at such times and in such manner as may from time to time be prescribed by the by-laws of said corporation.

SEC. 7. At all meetings of said corporation a majority of the shares of said corporation shall be necessary to constitute a quorum for the transaction of the business of said corporation, but a less number of shares may adjourn such meeting from time to time, and at all meetings of said corporation when there is a quorum present all questions and matters shall be decided by a majority of the votes cast.

SEC. 8. Every stockholder in said corporation shall be entitled to one vote for every share by him owned, and may vote on said shares either in person or by proxy.

514 SECT. 9. The stock or share of each and every stockholder shall at all times be pledged and liable to said corporation for all debts and demands due or owing from such stockholder to said corporation, whether the same are overdue or due and payable at a future day and whether the same shall arise from assessments or instalments or from any other contract or dealing originally made and had with said corporation; and in case the proprietor of any share or shares shall neglect or refuse to pay such debt or demand to said corporation within twenty days after the same becomes due and payable, or in case there be no fixed day of payment within twenty days after demand for payment in writing, then and in such case said corporation is hereby empowered to sell at public auction so many shares, but not fractions thereof, of such delinquent proprietor as will produce sufficient to pay and discharge all such debts and demands of said corporation and all incidental expenses, first giving notice in one of the public newspapers printed in the city of Providence of the time and place of such sale at least twice a week for two entire weeks before said sale, and upon such sale said corporation is hereby authorized to issue certificates thereof to the purchaser at such sale in the form and manner by which said shares are transferable by the regulations of said corporation, and such sale and transfer shall vest in such purchaser the legal title to said shares so sold, and upon such sale said corporation is authorized to receive from such purchaser the amount the same may be sold for and to apply and appropriate all or so much thereof as may be necessary to the payment of all such debts and demands as may be due or owing from such delinquent stockholder to said corporation and all incidental expenses of such sale; and in case the proceeds of such

sale be more than sufficient to pay all such debts and demands due or owing from such stockholders to said corporation and the incidental expenses of such sale, then the surplus shall be paid over to the said stockholder; but in case the proceeds of such sale be not sufficient to pay all such debts and demands so due or owing to said corporation from such delinquent stockholder, then and in such case said corporation may have their action against such stockholder for the balance so remaining unpaid.

515 SEC. 10. Said corporation shall at all times have a counting-room or place of business in the city of Providence, and in all proceedings in law or equity in which said corporation shall be a party the leaving an attested copy of the writ, summons, or other process with the president, secretary, clerk, or agent of said corporation or at such counting-room or place of business shall be a sufficient service thereof.

SEC. 11. The liabilities of the members of this corporation for the debts of the corporation, its members and officers, shall be fixed and limited by, and the corporation, its members and officers, shall in all respects be subject to, the provisions of chapters 125 and 128 of the Revised Statutes and all acts in amendment thereof.

SEC. 12. Byron Sprague, William Sprague, and Amasa Sprague, or either of them, are hereby authorized to call the first meeting of the stockholders in said corporation for organization and for the election of a president, secretary, and such other officers as they may see fit, to hold their offices until the next annual election and until others are elected in their places, and to transact any other business of the corporation hereby created at such time and place and giving such notice thereof as they may deem reasonable and proper.

Circuit Court of the United States, Rhode Island District.

I, Isaac H. Southwick, Jr., the examiner named in the commission hereunto attached, hereby certify that the aforenamed Clarence H. Guild personally appeared before me on the eleventh day of January, A. D. 1884, at ten o'clock in the forenoon and at half past two in the afternoon, at the office of Zechariah Chafee, trustee, No. 3 Exchange Place, in the city of Providence, in said district; that the said Clarence H. Guild, after being sworn to testify the truth, the whole truth, and nothing but the truth, gave his foregoing deposition, which was reduced to writing by me in his presence; that said deposition, when completed, was read over to said deponent and was by him signed in my presence and in the presence of such of the parties or counsel as attended.

516 I further certify that the Exhibits G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U No. 1, U No. 2, U No. 3, annexed to the foregoing deposition of Clarence H. Guild and authenticated by my signature, are true copies of the documents referred to in said deposition, and that said exhibits were hereunto attached by me.

I further certify that said deposition was taken at the request of William Sprague, to be used in his behalf at the hearing of a suit in equity now pending in said circuit court, wherein Francis D.

Moulton is complainant and Zechariah Chafee and others are respondents; that counsel of said Sprague notified the counsel of record of the other parties to said suit of the time and place of taking said deposition, as appears by the notification and indorsements of counsel thereon hereunto attached.

I further certify that I am not of counsel nor the solicitor of any party to said suit, and that I am not interested in any way whatsoever in the event of said suit.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Deposition of William Sprague.

WILLIAM SPRAGUE, of South Kingston, in the county of Washington and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said William Sprague, one of the respondents in said suit, doth depose and say as follows to questions proposed by ANDREW B. PATTON, Esq., of counsel for said William Sprague:

Int. 1. What is your name and residence?

Ans. William Sprague; South Kingston, Rhode Island.

Int. 2. Are you one of the defendants in this suit?

Ans. Yes.

Int. 3. State whether or not you was president of the A. & W. Sprague Manufacturing Company; if so, when and whether or not you was a stockholder of said company; and, if so, to what amount, do you know?

517 Ans. I was president from its organization till November, 1873. I was stockholder—2,500 shares personal and 1,200 shares as guardian of the three Hoyt children, or thereabouts.

Int. 4. Whose duty was it, under the by-laws of the company, to execute all deeds and leases made by the company?

(C. Frank Parkhurst, Esq., objects to this question as not the best evidence of the fact inquired of and as immaterial and incompetent under the pleadings.)

Ans. The president's.

Int. 5. State whether or not the A. & W. Sprague Manufacturing Company authorized you as its president to execute to Zechariah Chafee a mortgage deed of its property, and if you as president executed a mortgage deed of the property to Zechariah Chafee in trust.

Ans. No; I did not.

Int. 6. State what was the general business of the A. & W. Sprague Manufacturing Company under its charter.

Ans. Making print cloths and printing them.

Int. 7. What was the financial condition of the company in the fall of 1873, prior to Nov. 1?

Ans. Insolvent.

Int. 8. What was the general state of manufacturing business in

which the company was engaged during the fall and summer of 1873, and what was the general condition of the money market?

Ans. A panic existed, and great stringency in the money market.

Int. 9. About what time did the notes of the company go to protest?

Ans. October, 1873.

Int. 10. State what action, if any, the creditors of the company took with reference to the matter.

Ans. After a good deal of consultation they recommended a deed to three trustees—Waterman, Lockwood, Nightingale.

Int. 11. State what was done by the company and the Spragues in reference to this recommendation made by creditors.

Ans. Some time during the last of November the company signed a trust deed and some of the individual stockholders to the persons named in my answer to Int. 10 above.

518 Int. 12. Did you sign that deed?

Ans. I did.

Int. 13. State the names of the other signers of the deed.

Ans. Amasa Sprague, treasurer for the A. & W. Sprague Manufacturing Company, Amasa Sprague, Fanny and Mary Sprague, A. & W. Sprague.

Int. 14. Was the deed fully executed at that time by all the parties grantors?

Ans. It was.

Int. 15. Was the same accepted by the said Waterman, Lockwood, and Nightingale?

Ans. It was not.

Int. 16. Can you fix the date when said deed was so executed?

Ans. I think it was the 28th or 29th of November, 1873.

Int. 17. Were the three trustees present at the time of executing said deed, and what, if any, reasons did they give for not accepting the same?

Ans. They were present; their objections, subsequently stated, because of their personal liabilty.

Int. 18. What was then done by the creditors and the Spragues, including yourself, in reference to the matter? State all you know about it.

Ans. I was not consulted in any of the previous proceedings except the signing the deed to the three trustees when it was executed, and, returning from Washington, to which place I went immediately after signing the deed to the three trustees, I learned that Chafee had been made trustee and was then advised, to prevent attachments on my individual property, to execute it.

Int. 19. How soon did you learn of this change from the three to the one trustee?

Ans. Through my mother, who stated that matters were being badly managed. I think I returned within ten days.

Int. 20. Did you, after your return, acknowledge the deed to Mr. Chafee, and was it the same deed which had been executed to the three trustees?

Ans. Yes; and it was the same deed that was acknowledged to the three trustees.

519 Int. 21. Did you write your signature over again, or did you simply acknowledge the signature which you had already made on the deed to the three trustees to be your signature?

Ans. I made no signature but to the three trustees.

Int. 22. At the time you executed the deed to the three trustees and subsequently to Mr. Chafee, did you expect that if the business of the corporations could be carried along for the time mentioned in the deed that you would be able to extricate the company from its financial embarrassments and have a surplus of the estates left at that time, which would revert to the grantors in the deed, and was the deed executed by you for that purpose?

Ans. There was three dollars of property, as then estimated, to pay one dollar of debt, which could have been paid easily, if properly managed, within the time specified in the deed. Yes; it was for that purpose.

Int. 23. Did the executing of the deed delay the creditors whose debts had already matured from collecting their claims due against the company by ordinary legal remedy for the period of three years?

Ans. It did.

Int. 24. State what led to the making of the deeds of assignment of April 6, 1874.

Ans. To prevent the property from being taken possession of under the United States bankruptcy act.

Int. 25. State whether or not a petition in bankruptcy had been filed against the estate, by whom it was filed, and what steps were taken to prevent the estate from being thrown into bankruptcy.

Ans. The Bank of Commerce of Providence had filed a petition in bankruptcy, and the assignments were made to prevent it.

Int. 26. As the result of making the assignments, were the bankruptcy proceedings withdrawn?

Ans. They were.

Int. 27. State when the property in controversy was puchased, by whom, and under what right you claim the title to the Canonchet property by possession.

Ans. Bought at sheriff's sale; bid off by Amasa Sprague

520 for me May, 1862, and taken in the name of A. & W. Sprague, to be deeded to me on demand. I took possession at once. Owing to non-compliance with the full provisions of the sale, the deed was not executed until later.

Int. 28. By whose money was the property improved subsequent to the purchase?

Ans. By my money in this. It was charged to the estate, I having a large credit balance in the company and corporation to offset it.

Int. 29. Was your credit in the company so offset by the moneys advanced in the improvement of the estate?

Ans. It was so understood by all.

Int. 30. From what fund was the purchase-money of the estate paid?

Ans. A. & W. Sprague copartnership.

Int. 31. State whether or not you have been in possession of the estate in controversy from its said purchase, May 1, 1862, claiming the same in fee simple and of your own right, and whether or not you have had the uninterrupted, quiet, peaceable, and actual seizing and possession of the same from that time to the present, and whether you are now in possession of the same under such claim of right.

Ans. Yes.

The foregoing direct examination is taken subject to all objections as if specifically noted.

I. H. SOUTHWICK, JR., *Examiner.*

Cross-examination *de bene* by JAMES TILLINGHAST, Esq., of counsel for Z. Chafee:

X Int. 1. When did you first go personally to reside at Canonchet?

Ans. After my return from the session of Congress beginning December, 1862. The place was being prepared for me for that purpose from the date of its purchase.

X Int. 2. You say, in your answer in this cause, that Weeden H. Berry, deputy sheriff, by deed dated May 1, 1862, conveyed a portion of this estate to Niantic Bank. Did you ever hold or have possession of that part of said estate under that bank?

521 Ans. The property was sold—the sheriff sold it—as the property of the Niantic Bank, if I remember right. There was a question of a grave-yard in the matter, and from the amount received at the sheriff's sale a thousand dollars was taken out, and that settled the question.

X Int. 3. Do you mean to say that you, at the time, claimed to hold possession of that portion of the estate which was derived from the Niantic Bank, as set out in your answer, claiming title to it in fee simple as against that bank prior to the purchase of it from the bank itself?

Ans. All I know is I had possession of it prior to 1866—that is all I can answer—against Niantic Bank or anybody else. All I know is I had possession long before 1866.

X Int. 4. How and under what contract, purchase, or arrangement (and from or with whom was such contract, purchase, or arrangement made) did you first go into possession of that bank portion of that estate?

Ans. It was sold at auction on the place, and bid in by Amasa Sprague and possession taken at once.

X Int. 5. By whom and when was that auction sale referred to in your last answer?

Ans. I can only tell by the deed from Berry.

X Int. 6. Do you not, in fact, in these answers confound the sheriff's sale at which the Niantic Bank itself was the purchaser, as set out by your answer in this case, with a subsequent sale made by the bank at which Amasa Sprague or A. & W. Sprague became the purchaser

or purchasers, and which last sale was effected and confirmed by the deed of Oct. 3, 1866, from the Niantic Bank to the A. & W. Sprague Manufacturing Company, also referred to in your answer?

Ans. No; because I had occupied the premises years before.

X Int. 7. Do you mean to say that either you or A. & W. Sprague purchased at the sheriff's sale made upon execution against John Thompson referred to in your answer?

Ans. I mean to say that the only purchase that I know about was by Berry on the premises, and his deed, there being no other, fixes the date.

522 X Int. 8. How, then, came the deed under that sale to be made to the Niantic Bank, as set out in your answer?

Ans. The purchase was made by A. & W. Sprague, and I presume a deed was subsequently given by which title was derived.

(Question repeated to witness.)

Ans. The Berry deed conveyed to the Niantic Bank or this property was sold by the sheriff to the Niantic Bank under execution. The subsequent proceedings grew out of the relation of the sheriff to the Niantic Bank. I claim the property from the sheriff's deed, dated May 1, 1862, and that the deed from the Niantic Bank was supplementary to it, and that the foregoing answer was a misapprehension of the question.

X Int. 9. Were you present at that sheriff's sale?

Ans. I was present at the sale of property by the sheriff on the place.

(Question repeated to the witness.)

Ans. I was present when the property was sold on the place by the sheriff and not at any other sale.

(Question again repeated to the witness.)

Ans. That is my answer.

X Int. 10. Who was in possession of that estate at the time of that sheriff sale under execution of the Niantic Bank? I mean who was actually living upon that portion of the estate at the time it was sold under that execution?

Ans. I think John Thompson.

X Int. 11. And how long after that did John Thompson and his family continue to occupy that portion of the estate?

Ans. I don't remember.

X Int. 12. They did continue there some time, did they not?

Ans. I don't remember.

Jan. 14, 1884, 2 o'clock p. m.—Adjourned to 3 o'clock, at same place.

I. H. SOUTHWICK, JR., *Examiner.*

X Int. 13. Please examine the paper now shown you, purporting to be the advertisement and the auctioneer's original return of sale of the portion of the estate which belonged to the Niantic Bank and a copy of which is annexed, marked "Exhibit V," and

523 say whether or not you can now state at what date and at whose sale that part of the estate was purchased by A. & W. Sprague.

(The paper referred to in this question is hereunto annexed, marked as stated in the question.)

Ans. I state that I know no other sale than the sheriff's sale, May 1, 1862.

X Int. 14. Do you mean to say that either you or Amasa Sprague or the firm of A. & W. Sprague or any one in their behalf or either of you did purchase at the sheriff's sale under the execution of the Niantic Bank against John Thompson, referred to in the sheriff's deed to the Niantic Bank of May 1, 1862, referred to in your answer?

Ans. I mean to say that the property was bought at the sheriff's sale on the premises, and the only record I have of the time is the town clerk's record of May 1, 1862.

X Int. 15. By whom do you say the estate was purchased at that sale?

Ans. The purchase was made for me.

X Int. 16. By whom was it so made?

Ans. It was bought by my authority, and I have already stated who bid it off.

X Int. 17. Please examine the papers now shown you, copies of which are annexed, marked "Exhibit W," and state, if you can now say, at what date John Thompson quit possession of that portion of the estate.

(The papers referred to in this question are hereunto annexed, marked as stated in the question.

Andrew B. Patton, Esq., of counsel of said William Sprague, objects to the papers referred to annexed in this and the preceding question, and also to the paper referred to in Int. 25 below and hereunto annexed as Exhibit —, on the ground that he has had no notice of the exhibits offered and has had no previous opportunity to examine them.—I. H. Southwick, Jr., examiner.)

Ans. I can't say.

X Int. 18. In whose handwriting is the body of this last exhibit?

524 Ans. I am not an expert in handwriting.

X Int. 19. Did you know the late John A. Gardner, of this city, attorney and counselor at law?

Ans. Yes.

X Int. 20. What relation did he bear to the firm of A. & W. Sprague, if any, in January and February, 1864?

Ans. Gardner bore the relations to A. & W. Sprague that thousands bore at that time, and no other. Does that answer your question?

X Int. 21. What relation was that?

Ans. I think Gardner, brother-in-law of Gen. Frieze, was acting for him, and Gen. Frieze was, in 1864, in my employ.

X Int. 22. Was not Mr. Gardner, in January and February, 1864, acting in many matters, or in such matters as were put in his hands, as the attorney of A. & W. Sprague?

Ans. No.

X Int. 23. Do you mean to say that he was not then in the employ of A. & W. Sprague as their paid counsel, and did not act in any of their matters as their attorney?

Ans. I do.

X Int. 24. Do you mean to say that Mr. Gardner did not act as the attorney of A. & W. Sprague in matters pertaining to the purchase of this estate from or through the Niantic Bank and in subsequent matters with the bank respecting that purchase?

Ans. I mean to say he had nothing to do with the purchase, and had no authority from me to meddle with it. In subsequent matters with the bank respecting that purchase Gardner was not acting under my directions, if he did act.

Cross-int. 25. Please examine a paper bearing date Westerly, Sept. 2, 1865, now shown you, and state whether or not it was the demand made upon said Niantic Bank in behalf of your firm, a copy of the paper being hereto annexed, marked "Exhibit X."

(The paper referred to in this question is hereunto annexed, marked "Exhibit X," as stated in the question.)

Ans. Gardner signs himself attorney for A. & W. Sprague in that document. He had no authority for any such document or proceeding.

525 (Question repeated to the witness.)

Ans. No.

(The foregoing cross-examination is taken subject to all objections as if specifically noted.—I. H. Southwick, Jr., examiner.)

Redirect examination by ANDREW B. PATTON, Esq.:

Int. 32. Is the property described in the deed from Weeden Berry to the Niantic Bank that part of the premises known as Canonchet, whereon the homestead house now stands?

Ans. Yes.

Int. 33. State whether or not a controversy arose as to the title at the sheriff's sale which resulted in the making of the deed from Sheriff Berry to the National Niantic Bank, which controversy was not finally adjusted until the giving the deed from the Niantic Bank to the A. & W. Sprague Manufacturing Company, Oct. 3, 1866.

Ans. Yes. It grew out of a portion of the estate sold at the auction sale that was exempted in prior liens on the property, for which a thousand dollars was subsequently allowed.

Int. 34. Was the deed then passed from the Niantic Bank to the A. & W. Sprague Manufacturing Company?

Ans. Yes.

WILLIAM SPRAGUE.

Subscribed by said William Sprague in my presence this fourteenth day of January, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

EXHIBIT V.

A true copy. Attest: I. H. Southwick, Jr., examiner.

Conditions of sale of the Robinson farm (so called) by the Niantic Bank, September 2d, 1863.

The property will be sold to the highest bidder, the bank reserving the right of one bid, and is the same property leased to
526 and now occupied by John Thompson, being the same premises conveyed to said Niantic Bank by sheriff's deed dated May 1st, 1862, said deed purporting to convey 376 acres (more or less), and the Niantic Bank will give a warrantee deed of the same, except as against the lease of said Thompson, until Ap'l 1, 1864.

All taxes assessed on said property prior to this date will be paid by the bank; all assessed after this date will be paid by the purchaser. Possession will be given to the purchaser on the first day of April next. The terms of payment will be one-third cash, and the balance in two equal payments at twelve and twenty-four months, with interest payable semi-annually.

A bond for a deed will be given by the bank at the first payment.

If the conditions of sale are not immediately complied with to the satisfaction of the auctioneer, the property will be struck off to the next highest bidder or put up again at auction, at his option.

South Kingston, Sept. 2, 1863.

JAMES W. ANTHONY, *Auctioneer.*

Sold to A. & W. Sprague for $24,000.

Put up and struck to A. & W. Sprague, they being highest bidders.

JAMES W. ANTHONY, *Auctioneer.*

EXAMINER'S NOTE.—Attached to the foregoing, which is in manuscript, there appears in print the following notice, apparently cut from some newspaper:

Sales at Auction.

Elegant country seat for sale at auction.

The Robinson farm, so called, now occupied by John Thompson, Esq., will be sold at public auction on the premises on Wednesday, Sept. 2d, 1863, at 11 o'clock a. m.

Said farm is situated on the ocean, near Narragansett Pier, in the town of South Kingston, R. I., about three miles from the village of Wakefield, containing about 375 acres of excellent land,
527 a portion of which is wood, with a good orchard, two dwelling-houses, and other buildings thereon.

This farm is well adapted for agricultural purposes, and also for

building lots for summer residences, the entire eastern boundary being upon the Atlantic Ocean.

Terms made known at the time and place of sale. A warranty deed will be given.

JAMES M. PENDLETON,
Cashier Niantic Bank.

Westerly, R. I., Aug. 18th, 1863.

EXHIBIT W.

A true copy. Attest: I. H. Southwick, Jr., examiner.

NIANTIC BANK, WESTERLY, *Febru'y* 19, 1864.

DEAR SIR: The Niantic Bank have sold to A. & W. Sprague the Robinson farm, so called, in South Kingston, occupied by you, and under the contract of sale have agreed to give possession thereof to said firm on the first day of April next.

You will therefore surrender up & give possession of said farm to them, the said firm of A. & W. Sprague, at the close of your term of lease; and if you and they can make satisfactory arrangements between yourselves to give them possession thereof sooner, this shall be your authority so to do.

Respectfully yours, &c., JAMES M. PENDLETON.

To John Thompson, Wakefield.

EXAMINER'S NOTE.—The foregoing appears upon the first two pages of a sheet of note paper. Upon the third page appears the following:

PROVIDENCE, *February* 25, '64.

GENTLEMEN: Pursuant to the aforegoing authority, I, John Thompson, lessee in possession of said Robinson farm, do
528 hereby surrender and deliver up to you full and complete possession thereof with the same effect as though done in the presence of witnesses on the premises, and hand you herewith the keys to the houses and buildings thereon.

Very truly yours, &c., JOHN THOMPSON.

To A. & W. Sprague, Providence.

We hereby assent to the above.

SAM'L RODMAN.

SAM'L RODMAN, *Assignee.*
H. A. HIDDEN, *Assignee.*

EXHIBIT X.

A true copy. Attest: I. H. Southwick, Jr., examiner.

WESTERLY, *September 2d*, 1865.

To the president, directors, and company of the Niantic Bank and the president, directors, and company of the National Niantic Bank of Westerly, into which said Niantic Bank has been formed or converted, pursuant to the provisions of the national currency act of Congress and the provisions of the acts of the General Assembly of Rhode Island relative to the winding up of State banks for the purpose of the formation or conversion into national banks.

GENTLEMEN: In behalf of the firm of A. & W. Sprague I hereby demand from said Niantic Bank or National Niantic Bank of Westerly, whichever is authorized to make the same, a warranty deed of the Robinson farm, so called, in South Kingston, Rhode Island, in accordance with the written terms of sale made by said Niantic Bank, dated Sept. 2d, 1863, signed by James W. Anthony, auctioneer (who was the agent of said Niantic Bank at time of sale), and delivered to said firm of A. & W. Sprague, free from incumbrance (except as against the lease of John Thompson until April
529 1st, 1864), and herewith tender in behalf of said firm of A. & W. Sprague the sum of eight thousand two hundred and forty dollars in payment of the balance of consideration due this day, according to said terms of sale.

Very respectfully, your ob't serv't,

JOHN A. GARDNER,
Att'y for A. & W. Sprague.

EXAMINER'S NOTE.—The foregoing appears in manuscript upon the first two pages of a sheet of note paper. Upon the third page, apparently in the same handwriting, except the signature, appears the following:

I, the subscriber, being the only person present attending to the business of said Niantic Bank or National Niantic Bank, have this day, at the banking-rooms, at 11 o'clock a. m., at the hands of J. A. Gardner, received a document, a true copy of the foregoing, and a letter of this date from A. & W. Sprague, stating said Gardner to be the att'y of said firm, to demand deed and pay balance of consideration, and said Gardner at the same time made demand for a deed, as above, from me, and has tendered the sum of $8,240 in legal-tender currency in payment of balance of consideration as aforesaid, but I am unable to give the deed demanded and refuse so to do, and further state that the officers of the bank are absent from the county.

Westerly, Sept'r 2, '65.

J. HOWARD MORGAN.

WILLIAM SPRAGUE, of South Kingston, in the county of Washington and State of Rhode Island, being recalled and being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said William Sprague, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by ANDREW B. PATTON, Esq., of counsel for said William Sprague:

Int. 1. State whether or not there was any agreement between you and Mr. Chafee that you should hold possession of the estate in controversy until the same should be disposed of by him.

530 Ans. There was not.

Int. 2. State whether or not Mr. Chafee has ever been in possession of the property, and if you have ever held possession of the same under him in any manner or form.

Ans. Mr. Chafee never has been in possession of the property. I never have held possession under Mr. Chafee in any manner or form.

(The foregoing deposition is subject to all objections by counsel for Z. Chafee, as if specifically noted.—I. H. Southwick, Jr., examiner.)

W. SPRAGUE.

Subscribed by said William Sprague in my presence this fifteenth day of January, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

AMASA SPRAGUE, of Cranston, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said William Sprague, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by ANDREW B. PATTON, Esq., of counsel for said William Sprague:

Int. 1. What is your name and where is your residence?

Ans. My name is Amasa Sprague, and my residence is the town of Cranston.

Int. 2. Are you a stockholder of the A. & W. Sprague Manufacturing Company; and, if so, to what amount?

Ans. Yes; I am a stockholder. I don't know the number of shares that I represent now; somewhere in the neighborhood of 2,500 shares.

Int. 3. State what official position you held in reference to the A. & W. Sprague Manufacturing Company.

Ans. I was both president and treasurer.

Int. 4. State when you was elected to the office of president of the company.

Ans. In or about the month of November, 1873.

531 Int. 5. Was you the treasurer of the company at that time?

Ans. I was.

Int. 6. How long did you hold the office of president and treasurer from that time?

Ans. Up to the present time from that time. I was the treasurer long before that time.

Int. 7. What was the financial condition of the company in the fall of 1873?

Ans. It was bad. We owed more money than we could pay in a panic.

Int. 8. State whether or not the company made a conveyance of its property to Waterman, Lockwood, and Nightingale on Nov. 28, 1873, and what led to the making of that assignment; state fully.

Ans. They did make the assignment to Waterman, Lockwood, and Nightingale on Nov. 28, 1873. We had become embarrassed, and it was thought that by putting the property in that position to the three trustees there was property enough to pay all the indebtedness and have a large surplus left; and the creditors had several meetings, and it was done through their recommendation. It was made at the recommendation of the committee of creditors.

Int. 9. State when and where the deed to the three trustees was executed, and whether or not it was accepted by the three trustees at that time.

Ans. It was signed, sealed, and executed to the three trustees on the 28th of November, 1873, at Mrs. Fanny Sprague's house, in Young Orchard avenue. The trustees did not accept the trust that night, but they expected to be able to accept it the next day; but the next day came and they warn't ready to accept the trust, on account of personal liability, without the creditors in some way would indemnify them from any losses. They refused to accept.

Int 10. State what was then done in reference to the making of the deed by the Spragues and the creditors.

Ans. The trustees did not accept, and it run on till the first day of December following. Then Hopkins & Pomroy, being creditors,
532 came to the office and notified me that they proposed to put on an attachment, as there was nothing being done. I told them to wait until morning, and the probability was the trustees would accept. They concluded to wait. Then I went to Mr. Thurston (between four and five o'clock in the afternoon of the 1st of December), and told him what Hopkins & Pomroy proposed to do, and he said the thing must be fixed some way or other that night.

(James Tillinghast, of counsel for Z. Chafee, objects to all conversation.—I. H. Southwick, Jr., examiner.)

Then he notified his associates of the condition of affairs and notified them to meet at Mrs. Fanny Sprague's house that night. They met at Mrs. Fanny Sprague's that night—Mr. Tillinghast, Mr. Thurston, Mr. Gardner, and Mr. Hart, who then were my counsel, or were supposed to be—and Mr. Chafee was proposed by these gentlemen to be the trustee. They sent for Mr. Chafee (that is, the legal gentlemen), after looking the matter over, knowing if there warn't something done that night we should be all covered over with at-

tachments next morning, and Mr. Chafee said that he would accept the trust. Then the deeds had been made out and executed to Lockwood, Nightingale, and Waterman, and their names were erased and Mr. Chafee's inserted, and on the acknowledgment the twenty-eighth day of November was scratched out and the first day of December inserted. After the deeds were complete Mr. Martin, the notary, was sent for. He arrived, I should judge, somewhere about one o'clock, but he took no new acknowledgment. Mr. Thurston and Mr. Gardner questioned the legality of the deed, and Mr. Thurston remarked that he hadn't any time to do it any differently, for it must be on record to-morrow morning before nine o'clock. If it warn't we should all be covered over with attachments. Then most of the deeds were sent out that night and the town clerks called up, and most of them was recorded before nine o'clock in the morning.

Int. 11. What time of the night of Dec. 1 or morning of Dec. 2 were the deeds completed and sent for record?

Ans. It was on the morning of the second. They was finished somewhere in the neighborhood of one o'clock of Dec. 2. They were sent for record shortly after.

533 Int. 12. State whether or not this arrangement was made for the purpose and with the view to deprive the creditors of obtaining their claims against the estate by the ordinary legal processes and of delaying them from obtaining their claims against the estate for the period of three years.

Ans. Yes; it was all done for that purpose—for delay.

Int. 13. State whether or not you expected by this arrangement that the debts of the company would be paid and the property preserved to a greater or less extent for the benefit of the parties making the deed.

Ans. Yes, sir; that's so.

Int. 14. State whether or not there had been a meeting of the stockholders of the company which authorized you as treasurer of the company to execute this deed to Chafee prior to Dec. 1, 1873.

Ans. No, sir; I never had any authority.

Int. 15. State whether or not you signed or acknowledged that deed to Mr. Chafee on the night of Dec. 1, 1873, which you have referred to as treasurer of the A. & W. Sprague Manufacturing Company or as one of the firm of A. & W. Sprague or for yourself individually.

Ans. The deed was signed on the twenty-eighth day of November, sealed and executed on the night of the twenty-eighth day of November, and never was signed or executed at any other time.

(Question repeated to the witness.)

Ans. No; it had already been signed and acknowledged on the 28th of November, 1873, to the three trustees.

Int. 16. State whether or not you bid off the property or a portion of the property known as Canonchet, at a sheriff's sale; if so, state when and under what circumstances.

Ans. I think that property was bid off at a sheriff's sale in 1862, and I think I bid it off—I know I bid it off—to A. & W. Sprague,

and we took immediate possession of it. I bid it off for Governor Sprague, and we didn't take the deed, because there was some trouble in the reservation of a grave-yard. The first money was paid, I think, and there was a good deal of correspondence in relation to this grave-yard. It had been reserved, but the sheriff made no reservation of it in his sale, and it went on for a time, and
534 there was a great deal of correspondence about it, and at last it was settled, and then they gave the deed.

Int. 17. How long has this property been the homestead of Governor Sprague?

Ans. I think he moved in there soon after we bought it; somewhere about 1862. We smoothed up the house a little and moved in.

(The foregoing direct examination is taken subject to all objections as if specifically noted.—J. H. Southwick, Jr., examiner.)

Cross-examination *de bene* by JAMES TILLINGHAST, Esq., of counsel for Z. Chafee:

X Int. 1. As whose counsel were Messrs. Hart, Thurston, Gardner, and Tillinghast present at the house of Mrs. Fanny Sprague on the evening of Dec. 1, 1873?

Ans. They was all there, and they was supposed to be the Sprague counsel.

X Int. 2. How long prior to that time had Messrs. Thurston and Gardner been the counsel of the Sprague family?

Ans. For a great many years. I don't remember how many; but they had both been connected with and done business for the Spragues and their different corporations.

X Int. 3. How happened it, if you bid off the Niantic Bank portion of the Canonchet estate at the sheriff's sale, as you state you think you did, that the deed of that sale was made to the Niantic Bank?

Ans. I can't tell about that. I bid it off at sheriff's sale. It was some time after the sale before they took the deed, but we took possession of it immediately.

X Int. 4. Please look at the paper, with the advertisement annexed, now shown you, being the same of which a copy has been annexed to these depositions, marked "Exhibit V," and say whether or not you recognize them as having seen them before; and, if so, when and where.

Ans. I never saw these papers before. I bought this property at a sheriff's sale, and I didn't pay $24,000 for it, but I bid $25,000 for this farm. It wasn't sold for $24,000. It was struck off to A. & W. Sprague for $25,000.

535 X Int. 5. You say there was a good deal of correspondence with the Niantic Bank respecting that estate. Who conducted that correspondence?

Ans. I couldn't tell you, I am sure. I don't remember.

X Int. 6. Were you accustomed to keep office copies of your letters at that time?

Ans. I think so; not so particular as afterwards.

X Int. 7. Did you ever know John Thompson, who formerly owned this estate?

Ans. No, sir.

X Int. 8. Do you know who was in possession of that estate at the time you bought it? Who was then living there in the house?

Ans. I think Thompson.

X Int. 9. Do you know when he finally left it?

Ans. No; I can't tell you, but I know I took possession of it when I bought it for Governor Sprague.

X Int. 10. What do you mean by taking possession of it? Did you go there to live?

Ans. No; but I sent my men down there. I used to go down there. I didn't go there to live myself, but I sent my men down there to take charge of the property under me, and I was under William Sprague.

(The foregoing cross-examination is taken subject to all objections as if specifically noted.—I. H. Southwick, Jr., examiner.)

AMASA SPRAGUE.

Subscribed by said Amasa Sprague in my presence this fifteenth day of January, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

Circuit Court of the United States, Rhode Island District.

I, Isaac H. Southwick, Jr., the examiner named in the commission hereunto attached, hereby certify that the aforenamed William Sprague personally appeared before me on the fourteenth day of January, A. D. 1884, at eleven o'clock in the forenoon, at the office of the Quidnick Company, No. 6 Exchange street, in
536 the city of Providence, in said district, and again on the fifteenth day of said January, at eleven o'clock in the forenoon, at the office of Andrew B. Patton, Esq., No. 14 Westminister street, in said city, and that the aforenamed Amasa Sprague personally appeared before me on the fifteenth day of January, A. D. 1884, at eleven o'clock in the forenoon, at said office of Andrew B. Patton, Esq.; that then and there, respectively, as aforesaid, the said William Sprague and Amasa Sprague, after being sworn to testify the truth, the whole truth, and nothing but the truth, did severally and respectively give their foregoing depositions; that said depositions were severally reduced to writing by me in the presence of said deponents, respectively; that said depositions, when completed, were read over to or by said deponents, respectively, and that said deponents signed their respective depositions in my presence and in the presence of such of the parties or counsel as attended.

I further certify that the exhibits, V, W, X, annexed to the foregoing deposition of William Sprague and authenticated by my signature are true copies of the documents referred to in said deposition, and that said exhibits were hereunto attached by me.

I further certify that the foregoing depositions of William and of Amasa Sprague were taken at the request of said William Sprague, to be used in his behalf at the hearing of a suit in equity now pending in said circuit court, wherein Francis D. Moulton is complainant and Zechariah Chafee and others are respondents.

I further certify that I am not of counsel nor the solicitor of any party to said suit, and that I am not interested in any way whatsoever in the event of said suit.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Depositions of witnesses produced, sworn, and examined the sixth, eighth, and tenth days of May, A. D. 1884, at Providence, Rhode Island, under and by virtue of a commission, hereunto attached, issued out of the circuit court of the United States within and for the Rhode Island district, in a suit in equity now pending in said court, wherein Francis D. Moulton is complainant and Zechariah Chafee and others are respondents, as follows:

537 CHARLES BLAKE, of Providence, in the county of Providence and State of Rhode Island, being affirmed to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. What is your name, residence, and occupation?

Ans. Charles Blake; Providence; clerk of supreme court.

Int. 2. How long have you been acting in that capacity?

Ans. Nineteen years.

Int. 3. Will you please produce the original bill in equity—People's Savings Bank *et al. v.* Zechariah Chafee *et als.*, No. 1538—and the answers thereto, and state whether the said bill and answers are in your custody as said clerk?

Ans. Here is the bill and the joint and several answers of the said defendants, and they are in my custody as said clerk.

Int. 4. Please examine the original answer to said bill in said case made by the A. & W. Sprague Manufacturing Company, William and Amasa Sprague, and others, now shown to you, and state whether this paper is now in your custody as clerk, and whether it bears the original signatures of the parties joining in said answer, and by whom it is signed.

Ans. It is in my custody as clerk. It purports to bear the original signatures of the parties joining in said answer, and it is signed by the A. & W. Sprague Manufacturing Company, by Amasa Sprague, treas., with the corporation seal; William Sprague, Amasa Sprague, Mary Sprague, Fanny Sprague, A. & W. Sprague, Zechariah Chafee.

Int. 5. Are those the names of all the defendants to said bill?

Ans. Yes.

Int. 6. Please annex to this deposition extracts from said bill as follows:

From second paragraph on the fourth page, the last three lines and a half, to wit: "The respondents aforesaid, excepting said Chafee, executed a conveyance of their property to said respondent, Zechariah Chafee, a single trustee selected by themselves and without consultation with their creditors and without their knowledge."

538 From the third paragraph on said page: "That in and by said conveyance the grantors therein conveyed to said Chafee all that property, real, personal, and mixed, not exempt from attachment by law and wherever situate."

Also the fifth paragraph on the fifth page of said bill: "Thereupon the said A. & W. Sprague Manufacturing Company did make, execute, and deliver to the said Zechariah Chafee a deed of assignment of their property upon the trusts and conditions following—that is to say, that said Chafee should convert the same into money, and the proceeds thereof apply, first, to the payment of all the creditors of the A. & W. Sprague Manufacturing Company who should bring in their claims and extend the time of payment thereof for the term of time provided in the conveyance hereinbefore referred to, dated Nov. 1, 1873, and, second, to the payment of all other creditors of said A. & W. Sprague Manufacturing Company."

(Abraham Payne, of counsel for complainant Moulton, objects to this question on the ground that it is incompetent and irrelevant to the issues in this case.

Andrew B. Patton, of counsel for William Sprague, one of the defendants in this suit, objects to this question on the same grounds as stated in the above objection of Abraham Payne.)

Ans. They are embodied in the question addressed to me and are correctly extracted from said bill, as I find by comparison.

Int. 7. Please annex to this deposition extracts from said answer as follows:

From the fourth and fifth pages thereof the following: "Meanwhile several weeks had elapsed since the general meeting of the creditors, and it had become generally rumored throughout the community that the said persons named as trustees would not accept the office; and it came to the knowledge of the counsel of the A. & W. Sprague Manufacturing Company that it was intended on the part of some individual creditors holding large claims to attempt to secure a preference over other creditors by an attachment of the property, which would have frustrated the wishes and purposes of the creditors as expressed at said meeting and wholly prevented or greatly embarrassed the execution of any instru-

539 ment for their equal benefit; that thereupon, and in order that the wishes of the great body of the creditors should not be thwarted, and that the property should be secured for their equal benefit, the said A. & W. Sprague Manufacturing Company and the other grantors substituted in place of the said Waterman, Lockwood, and Nightingale the name of Zechariah Chafee (who at the last moment consented to accept the trust), and executed and delivered the said trust deed in said bill mentioned."

Also the following extracts from pages 5 and 6 of said answer:

"And these defendants, further answering, say that creditors came in under said trust deed and accepted the mortgage notes to the amount of $8,717,450.

"And these defendants, further answering, admit that, at the instance of the counsel of the said National Bank of Commerce of Providence, a large creditor of the A. & W. Sprague Manufacturing Company, the said corporation did execute the assignment, a copy whereof is annexed to the complainant's bill and marked Exhibit B, to said Chafee for more effectually securing an equal distribution of all its estate and property among the creditors, and the interest on the extension notes secured by said first-named conveyance was paid or offered to be paid, as in complainant's bill stated."

(Abraham Payne, counsel for said complainant, objects to this question on the same grounds stated in his objection to question six.)

(A. B. Patton, counsel for said William Sprague, objects to this question on the same grounds.)

Ans. They are embodied in the question addressed to me and are correctly extracted from said answer, as I find by comparison.

Int. 8. Have you in your possession certified copies of two decrees in the cause in equity numbered 1927, now pending in the supreme court of the State of Rhode Island for Providence county, Quidnick Company *v.* Z. Chafee, trustee; A. & W. Sprague Manufacturing Co., Amasa Sprague and William Sprague, as copartners and individually, Fanny Sprague and Mary Sprague, and others, the
540 one of said decrees entered on the fifth day of November, 1881, and the other of said decrees entered on the twenty-fourth day of May, 1882? If so, will you please annex them to this deposition as a part thereof?

(Abraham Payne objects to this question on the same grounds stated in his objection to question six above.

A. B. Patton objects to this question on the same grounds.)

Ans. I have them in my possession and furnish them, to be annexed as requested.

(The certified copies referred to are hereto annexed, marked "Exhibits Y, Z.")

CHARLES BLAKE.

Subscribed by said Charles Blake, in my presence, this sixth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

EXHIBIT Y.

Referred to by Charles Blake in his foregoing deposition. Attest: I. H. Southwick, Jr., examiner.

PROVIDENCE, *ss:*

Supreme Court. Oct. Term, 1881.

QUIDNICK COMPANY *vs.* ZECHARIAH CHAFEE *et als.* } In Equity. No. 1927.

This cause came on to be heard before the full court and was argued by counsel for the respective parties; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed—

First. That the A. & W. Sprague Manufacturing Co. is not indebted to the Quidnick Company under the contract dated December 18th, 1873, in the pleadings referred to.

Second. That the complainant is entitled to an account and repayment of all sums which said defendant Chafee, by virtue of his position as treasurer of said Quidnick Company, has used of the moneys of or belonging to said Quidnick Company for the payment of creditors holding the mortgage notes of said A. & W. Sprague Manufacturing Company secured under the trust mortgage
541 from said A. & W. Sprague Manufacturing Company to said Chafee as trustee in the pleadings mentioned or for the benefit of his trust estate under said mortgage for purposes not within or under said contract of December 18th, 1873, and it is referred to Samuel W. Peckham, Esq., as master, to take and state the accounts between said parties in respect thereof.

Third. It appearing that said property cannot be held to await such account except at great and ruinous expense, said Chafee is hereby directed to proceed and advertise and sell the same and to deposit the net proceeds of each and every sale he may make in the Rhode Island Hospital Trust Company, in Providence, upon its participation account in his name as trustee, not to be withdrawn except by order of this court or some justice thereof, and either party may from time to time apply to the court for any directions to said trustee in relation to such sales.

Entered as decree of court, 30th day, O. T., 1881 (Nov. 5, (1881).

By order:

HERBERT ALMY,
Assistant Clerk.

To be entered.
J. H. STILNESS, *J. S. C.*
P. E. TILLINGHAST, *J. S. C.*

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

EXHIBIT Z.

Referred to by Charles Blake in his foregoing deposition. Attest: I. H. Southwick, Jr., examiner.

Supreme Court. March Term, A. D. 1882.

PROVIDENCE, *ss:*

QUIDNICK COMPANY
v.
Z. CHAFEE *et als.* } In Equity. No. 1927.

This cause came again before this court on this 24th day of May' A. D. 1882, upon the report of Zechariah Chafee, trustee
542 and assignee, setting forth his failure to effect a sale of the estates mentioned in the decree of March 22nd, A. D. 1882, under the terms named in said decree, and that no bidder appeared to offer the upset price required by said decree to start the sale, and asking for instructions in the premises; and, now upon consideration of the facts set forth in said report and of the cause, it is ordered, adjudged, and decreed—

First. That the said decree of March 22nd, A. D. 1882, be, and the same is hereby, rescinded.

Second. The third clause of the order of this court entered November 5th, A. D. 1881, is hereby revived and re-established, with the amendment striking out the words "upon its participation account" and adding the following: "Provided, however, that if said Chafee shall receive an offer for the entire estate for a price satisfactory to him he may sell the same at private sale upon terms substantially similar, 'except in amount, to those embodied in our order of March 22nd, 1882, and in case of such sale the proceeds received from time to time by the said Chafee may be distributed as was provided in said order of March 22nd, 1882.'"

Entered as decree of court, May 24, 1882.

By order: HERBERT ALMY,
Assistant Clerk.

Enter.
J. H. STINESS, *J. S. C.*
P. E. TILLINGHAST, *J. S. C.*

A true copy.
Attest: CHARLES BLAKE, *Clerk.*

CLARENCE H. GUILD, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows to questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. Will you examine the signatures to the answer in equity,

No. 1538, which has been produced by Mr. Blake, the former
543 witness? State whether you are familiar with the signatures of A. & W. Sprague Manufacturing Company, by Amasa Sprague, treasurer; of William Sprague, of Amasa Sprague, of Mary Sprague, of Fanny Sprague, of A. & W. Sprague, and whether the signatures appended to said answer are the genuine signatures of said parties.

Ans. I have examined the signatures referred to; am familiar with the same, and they are all genuine signatures.

(C. F. Parkhurst reserves the right to recall Mr. Guild, who is now excused.—I. H. Southwick, Jr., examiner.)

Clarence H. Guild (Recalled).

THURSDAY, *May* 8, 1884.

Int. 2. Will you please examine the answers in the equity causes numbers 877, 878, 982, and 983, of Amasa Sprague, William Sprague, and the A. & W. Sprague Manufacturing Company? State whether you are familiar with the signatures of said parties, respectively, and whether the signatures appended to said answers are the genuine signatures of the said parties.

Ans. I have examined the papers in 878, 982, and 983, and find the signatures of parties named to be genuine. As to 877, I have not examined that, the same having been removed, before the question was asked, by the clerk, Mr. Pitman.

CLARENCE H. GUILD.

Subscribed by said Clarence H. Guild in my presence this eighth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

CHARLES HART, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows to questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. State your name, age, residence, and occupation.
544 Ans. Charles Hart; age, sixty-two; residence, Providence; occupation, lawyer.

Int. 2. Were you counsel for the A. & W. Sprague Manufacturing Company at and before the time of the execution of the trust deed of Nov. 1, 1873, a copy of which is annexed to the deposition of Zechariah Chafee in this cause; and, if so, were you familiar with the circumstances connected with the preparation and execution of that deed?

(A. B. Patton objects to the latter part of this question on the ground that it is irrelevant and immaterial to the issues in this cause.)

Ans. I was.

Int. 3. Will you state, in such detail as you deem necessary for a thorough understanding of the same, the circumstances connected with the preparation and execution of that deed?

(A. Payne, on behalf of the complainant, objects to this question as calling for information incompetent and irrelevant to any issues in this case.

A. B. Patton objects to this question on the same grounds stated in his objection to question two.)

Ans. In the month of October, 1873, the A. & W. Sprague Manufacturing Company became embarrassed financially, and an application on their behalf was made to the banks in the city of Providence for a loan of, I think, a million dollars to enable them to tide over their difficulties. At a meeting of the various representatives of banks the proposition was laid before them and a committee was appointed to take the proposition into consideration and report thereon at a future meeting. At a subsequent meeting the committee made a report that they considered it inexpedient, for reasons stated, to make the proposed loan, but recommended that a three years' extension be given to the corporation and the Spragues, they giving their notes to the creditors, to be secured by trust mortgage executed by the corporation and the stockholders upon the corporate and their private property, to secure the payment of the obligation. The committee also reported a statement of the assets and liabilities of the corporation and of the firm of A. & W. Sprague and the stockholders' private
545 property and their private liabilities. Subsequently, early in November, a public meeting was called of the creditors of the Spragues and creditors of the corporation. In pursuance of that call a large meeting was held of the creditors in one of the public halls of the city of Providence. The subject-matter of such an extension, with mortgage security, was considered by the meeting.

The plan was unanimously adopted by vote, and a committee was appointed at that meeting to examine the proposed trust-mortgage deed, to employ counsel for it, to select and report the names of trustees. That committee and the trustees proposed did employ their counsel on behalf of the creditors. Hon. B. F. Thomas, of Boston; Abraham Payne and Thomas C. Greene, of Providence, and Mr. Smith, of the firm of Martin & Smith, of New York, subsequently appeared in consultation with the counsel of the Spragues, but which particular one or ones of the above named were employed by the committee or the trustees I am unable to state; but the form of the trust mortgage which had been printed was, for two or three weeks subsequent to the meeting, under examination and discussion between the gentlemen above named and the counsel for the Spragues, slightly modified from time to time and changed to meet suggestions of the counsel for the trustees and committee of creditors until it got into shape which was satisfactory to them.

The three trustees which were named and agreed upon were Amos D. Lockwood, Rufus Waterman, and George C. Nightingale. During these weeks in November these trustees were considering whether they could safely accept the trust, in their judgment, and that question was discussed at the meetings of the respective counsel and the committee of creditors; but after much consultation and discussion of that question, on the 29th of November, 1873, the trustees sent a note to the committee of creditors substantially stating that they did not feel that they could accept the trust unless the creditors should furnish them with some sort of indemnity against what was, by them, I suppose, thought might be possible damage or loss to them. The creditors, many of them, had become very impatient at the delay in carrying out the scheme substantially agreed upon at the meeting early in November, above referred to. Rumors were circulated of intended attachments by creditors dis-
546 satisfied with this delay, which, if made, it was thought would probably defeat the whole scheme of an extension. Thereupon the Spragues and the officers of the corporation, on the first day of December, 1873, took into consideration the subject of executing the trust deed as prepared and substantially agreed upon to Zechariah Chafee, of Providence, instead of the three trustees above named. They decided so to do, did so, executing the exact deed which had been agreed upon, with only that change, Zechariah Chafee in place of the three named above, and such verbal alterations as became necessary, to wit, substituting trustee for trustees in the deed and the singular for the plural wherever it was necessary. The mortgage deeds were delivered to Mr. Chafee, and the trust accepted by him and subsequently left at the proper offices for record. It was the unanimously expressed desire of the committee of creditors during these meetings in November that the mills should be kept running, it being the expressed opinion of the committee and of the creditors generally that with the return of better times, which was speedily anticipated, the Spragues would be able to meet the interest of the mortgage notes as it accrued and the principal at maturity, and the 10,000 or 12,000 operatives be kept in employment, and the deed so provided to carry out that view—that the mills should be kept running.

Int. 4. Will you state whether or not these proceedings were matter of public notoriety?

(A. B. Patton objects to this question on the ground that it is irrelevant and immaterial and as not tending to prove the issues in this case.)

Ans. As they were matters of great public interest, they were inevitably of great public notoriety. The proceedings of the meeting of creditors held in the hall, as I have mentioned, were reported at length in the newspapers in the city of Providence. Several of the banks of the city and two of the savings banks were large creditors, besides a large body of private creditors, and the whole matter of the affairs of the Spragues' proposed extension and trust deed was the

subject of universal talk in the streets during all these weeks prior to the execution of the deed to Chafee.

Int. 5. Will you state why and at whose desire the trust deed was executed by the parties other than the corporation?

547 Ans. At the desire of the creditors. The scheme could not have been carried out of an extension unless the Sprague stockholders had mortgaged their private property in conjunction with the corporation. Moreover, as the manufacturing company had not complied with the provisions of the act relating to manufacturing corporations touching the annual returns of the condition of the corporation, the stockholders were jointly and severally liable for all the debts of the corporation, and, as the law then was, any creditor of the corporation, upon any writ issued against the corporation, could attach the private estate of any stockholder, and upon obtaining judgment against the corporation could levy his execution issued thereon upon such private estate of the stockholders. It was vital therefore to the interest of the stockholders that they should join with the corporation in the deed, and mortgage their private estates to secure the obligation of the corporation for which they were thus jointly and severally bound.

(A. B. Patton objects to that part of the answer which states what the law is in relation to the liability of stockholders.)

And, as the report of the committee made to the banks as above stated showed that the private assets of the several stockholders was largely in excess of their private liabilities, it could do no harm to the corporation or the corporate creditors.

Int. 6. Will you state for what reason the assignments of the 6th of April, 1874, made by Amasa, William, A. & W. Sprague, and the A. & W. Sprague Manufacturing Company, were executed to Zechariah Chafee?

(A. B. Patton objects to this question on the ground that it is irrelevant and immaterial.)

Ans. Subsequent to the execution of the trust mortgage one of the creditors of the A. & W. Sprague Manufacturing Company, to wit, the National Bank of Commerce, in the city of Providence, filed a petition under the national bankrupt act, then in force in the district court of the United States in the district of Rhode Island, against the corporation and against Amasa and William Sprague individually and as copartners under the style of A. & W. Sprague.

548 This creditor, through its counsel, Charles S. Bradley, Esq., proposed that if some further instruments satisfactory to the creditor and him as their counsel should be executed by the corporation and Amasa and William individually and as copartners they should withdraw the petition in bankruptcy. The instruments of April 6th, 1874, referred to, were declared by the creditor and him as its counsel to be satisfactory if executed. They were executed and the petition in bankruptcy was withdrawn.

Cross-examination by ABRAHAM PAYNE, counsel for complainant, subject to foregoing objection:

X Int. 1. To your knowledge, were the committee of creditors, prior to the execution of the deed to Chafee, consulted as to the proposed execution of the deed to him?

Ans. Not to my knowledge.

X Int. 2. To the best of your recollection, was I present at any consultation during the preparation of the trust deed above referred to?

Ans. Most, if not all, of the consultations took place in what was called the upstairs room of the office of the A. & W. Sprague Manufacturing Company, on Exchange Place. I should have said that Mr. Payne was present on some occasions, but I should not wish to be positive about that, but that it was well understood at those consultations he was of counsel, and so there stated, I am quite positive. I remember distinctly of Mr. B. F. Thomas, of Boston, being there, and Mr. Smith, of New York, and I certainly understood, during the time of these consultations, that Mr. Payne and Mr. B. F. Thomas were associated together.

Cross-examination by A. B. PATTON, counsel for William Sprague, respondent, subject to the foregoing objections:

X Int. 1. Was William Sprague present at the house of Fanny Sprague on the evening of Dec. 1, 1873, and did he then execute the mortgage deeds spoken of to Zechariah Chafee?

Ans. He was not present, and, of course, could not have executed any deed then and there.

X Int. 2. Was you present at the meeting of the stockholders of the A. & W. Sprague Manufacturing Company on the first day of December, 1873?

549 Ans. I don't at present recollect whether I was or not. I spent the larger portion of my time, after the embarrassment of the Spragues up to the time of the execution of the mortgage deed to Chafee, in the office of the A. & W. Sprague Manufacturing Company, and it is highly probable that I was present at that meeting.

X Int. 3. State when and where the corporate meeting referred to was held, if you recollect.

Ans. I don't recollect.

X Int. 4. Was you present at the house of Mrs. Fanny Sprague on the evening of Nov. 28, 1873?

Ans. I have not the slightest recollection of being. The only evening I recollect of being there was Sunday evening, Nov. 30, and Monday evening, Dec. 1.

X Int. 5. Did you assist in making the alterations in the mortgage deeds referred to on the evening of Dec. 1, 1873?

Ans. I have no recollection of so doing, but might have done so.

X Int. 6. Do you know whether or not the mortgage deeds referred to bore the signatures of the grantors or mortgagors prior to the alteration of the deeds?

Ans. That is my present recollect—.

X Int. 7. Did the deeds also bear the acknowledgments of Henry Martin, a commissioner for taking acknowledgments of deeds in this State?

Ans. I think they did.

X Int. 8. Did you see the grantors in these deeds acknowledge their signatures to these deeds before Henry Martin on the evening of Dec. 1, 1873?

Ans. At 11 o'clock on that evening, or thereabouts, Henry Martin was sent for, to my knowledge, for the express purpose of taking the acknowledgment of such of the grantors as were there present. I know that he came; I can see him there now in the house with the deeds in his hand, some of them, taking acknowledgments. There were only three persons to acknowledge, and I know they were there that evening.

X Int. 9. State the names of the persons.

Ans. Mary Sprague, Fanny Sprague, and Amasa Sprague.

550 Redirect examination by Mr. PARKHURST:

Int. 7. State for whom or what ones of the grantors of said trust deed of Nov. 1, 1873, Amasa Sprague executed and acknowledged the same, other than himself individually.

Ans. For the corporation and the firm of A. & W. Sprague.

CHAS. HART.

Subscribed by said Charles Hart in my presence this 6th day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

Office of C. Frank Parkhurst, 37 Weybosset street, Providence, R. I., room 22, May 6, 1884, 2 p. m.—Adjourned until 3 p. m. of same day at same place.

I. H. SOUTHWICK, JR., *Examiner.*

JAMES TILLINGHAST, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. What is your name, age, residence, and occupation?

Ans. James Tillinghast; age, 55; Providence; attorney-at-law.

Int. 2. Are you one of the counsel who engaged with Mr. Hart in the preparation of the trust mortgage spoken of by Mr. Hart in his deposition; and, if so, were any, and what, other counsel engaged with you in its preparation?

Ans. I am, and was engaged with him and other counsel in those matters referred to by him from the 29th of October, 1873. The other counsel acting particularly with us as counsel for the Messrs. Sprague at that time were Benjamin F. Thurston and the late

John A. Gardner. After the public meeting of the creditors
551 in the public hall referred to by Mr. Hart, which, I think, was on the 6th of November, 1873, other counsel were called in consultation with us in behalf of the creditors and of the then proposed trustees, Messrs. Lockwood, Nightingale, and Waterman, Messrs. Benj. F. Thomas, of Boston, and Mr. Smith, of the firm of Martin & Smith, of New York city. These two last gentlemen, particularly, met with us during that month of November in putting the trust mortgage into form satisfactory to the creditors, and some time during that month, I can't say just what date, Mr. Thomas C. Greene came into consultation with us, acting for the then proposed trustees or for some one or more of them, and I recollect particularly of going to Boston with Mr. Greene—I think it was on the 19th of November—to consult with Mr. Henry W. Paine, of that city, in reference to these matters, and particularly the form of the trust mortgage.

Int. 3. Have you heard the deposition given by Mr. Hart this morning in this case? And, if so, state whether you are cognizant of the facts and circumstances therein related by him in regard to the preparation, execution, and delivery of said trust mortgage and assignments, and whether you agree with him in his statement of those facts and circumstances substantially.

(In behalf of Mr. Moulton, Abram Payne, Esq., waives all objection to the form of this question if the information called for by it is competent or relevant to the issues in this case; but I object to the question on the ground that the information called for is incompetent and irrelevant to the issues in this case.

A. B. Patton makes the same waiver and objection on the part of William Sprague, one of the respondents.)

Ans. I was present and heard Mr. Hart testify to-day, and I was at the time cognizant of the circumstances attending the preparation, execution, and delivery to Mr. Chafee of the trust mortgage deed and the deeds of assignment of April 6, 1874, and I do agree with Mr. Hart substantially in his statement of these circumstances, and believe that he has stated them correctly. I add, as I recollect, if I am not mistaken, a complete copy of the mortgage deed to Mr. Chafee was published in the Providence Morning Journal of Dec. 3, 1873.

552 Cross-examination by A. B. PATTON, on behalf of William Sprague, respondent:

X Int. 1. When did you cease to be counsel for the A. & W. Sprague Manufacturing Company and become counsel for Mr. Zechariah Chafee?

Ans. I am not aware that I have been discharged as counsel for the A. & W. Sprague Manufacturing Company. Technically, I never was their counsel as adverse to the trusts of the mortgage. I became one of the counsel for Mr. Chafee as trustee immediately upon his acceptance of the trust, and remained so up to the present time.

X Int. 2. Was it the same with the other counsel who were asso-

ciated with you as counsel of the A. & W. Sprague Manufacturing Company at the time of the making of the trust mortgage deed?

Ans. I can only speak from general understanding. I believe Mr. Hart and myself were both retained on the same day, Oct. 29, 1873. Messrs. Thurston and Gardner had for many years, as I understand, been counsel for the Messrs. Sprague and the Sprague families and the A. & W. Sprague Manufacturing Company. We all, as I understand, became counsel for Mr. Chafee.

X Int. 3. Do you and your associates still remain so?

Ans. We do.

X Int. 4. Was you present at the meeting of the stockholders of the A. & W. Sprague Manufacturing Company on the evening of Dec. 1, 1873? If so, state when and where the meeting was held.

Ans. I was present at the house of Fanny Sprague on the evening of Dec. 1, 1873, and it is my recollection that there was a meeting of the stockholders then held at her house.

X Int. 5. State, if you know, what stockholders of the company participated in that meeting.

Ans. To the best of my recollection, there were then present that evening Mrs. Fanny Sprague, Mrs. Mary Sprague, and Mr. Amasa Sprague, either in person or by proxy, and it is my impression that Amasa Sprague held the proxy of William Sprague, but of this I am not entirely certain.

553 X Int. 6. Can you state what time of the evening the meeting was held?

Ans. I can only say I went there in the early part of the evening and remained there until after midnight. I cannot say just what hour.

X Int. 7. Did you take part in making the erasures and alterations in the deeds of Nov. 1, 1873, at the house of Mrs. Fanny Sprague on the evening of Dec. 1, 1873?

Ans. You mean, I presume, the erasing with a pen the printed names of Messrs. Lockwood, Nightingale, and Waterman and the insertion of the name of Mr. Zechariah Chafee as trsutee and the formal alterations of the pronouns where necessary; if that is what you mean, I did, at least to the extent of changing one of the draft deeds; whether more than one I cannot say.

X Int. 8. Were the signatures of the grantors on the deeds prior to the making of these alterations?

Ans. My present impression is that they were—that is, the grantors. Mr. Chafee signed them afterwards.

X Int. 9. State whether or not the deeds also bore the signature of Henry Martin, a commissioner qualified to take the acknowledgment of deeds, purporting that the deeds had been acknowledged before him.

Ans. I cannot say. I know Mr. Martin came there for the purpose of taking acknowledgments.

X Int. 10. State whether or not you saw any of the parties grantors that night acknowledge the deeds before Mr. Henry Martin; if so, who.

Ans. From my personal recollection I cannot say that I was

standing immediately by Mr. Martin when he took the acknowledgments.

X Int. 11. State the reasons which led to the making of the trust deed at so late an hour on the evening of Dec. 1, 1873; whether or not it was to prevent attachments from being levied upon the property.

Ans. That was not the reason for their being executed so late that evening, though it was an inducing reason for their being executed at that time, as we had some reason to suppose that one
554 creditor firm at least, who was known to be favorable to the settlement to be effected by the trust mortgage and desirous of seeing it carried out if it could be, had expressed themselves to the effect that their patience was worn out on account of the delay of the expected trustees in accepting the trust, and unless the trust was completed would probably attach.

X Int. 12. Was this fact known to the Spragues and Mr. Chafee at the time of executing the deed?

Ans. I cannot say. I had reason to suppose that Mr. Amasa Sprague had heard of it. Whether it was known to others of the Spragues or to Mr. Chafee I do not know.

JAMES TILLINGHAST.

Subscribed by said James Tillinghast in my presence this sixth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

Office of C. Frank Parkhurst, May 6, 1884, 4.30 p. m.—Adjourned to Thursday, May 8, 1884, at 10 a. m., at the same place.

Deposition of Henry V. A. Joslin.

HENRY V. A. JOSLIN, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. State your name, age, residence, and occupation.

Ans. Henry V. A. Joslin; age, thirty-eight years; residence, Providence; occupation, city clerk of the city of Providence.

Int. 2. As city clerk do you have charge of the books and papers showing the returns made by corporations located in the
555 city of Providence under the statute laws of the State of Rhode Island since 1864?

Ans. I do.

Int. 3. Have you examined those books and papers for the purpose of determining whether any returns of any kind have been made to the city clerk or recorded upon his books relating to the A. & W. Sprague Manufacturing Company, as required by said statute

law? And if you have, state what, if any, returns have been so made.

(Abraham Payne, of counsel for complainant Moulton, objects to this question on the ground that it calls for information immaterial to any issue in this case.

A. B. Patton, for respondent, Wm. Sprague, objects on the same grounds.)

Ans. I have so examined and find no returns whatever have been so made.

Int. 4. Is there or has there been since 1864 any town — of Providence or any other office to which such returns could have by law been made except that of city clerk of said city of Providence?

Ans. There has not.

Cross-examination by A. B. PATTON, Esq., subject to above objection:

X Int. 1. Does any return appear upon the records you have spoken of made by any of the stockholders of the A. & W. Sprague Manufacturing Company?

Ans. There does not, to my knowledge. I have examined the records and find no return made by any stockholder of the A. & W. Sprague Manufacturing Company.

HENRY V. A. JOSLIN.

Subscribed by said Henry V. A. Joslin in my presence this ninth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

556 *Deposition of Henry R. Davis.*

HENRY R. DAVIS, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. What is your name, age, residence, and occupation, and what was your occupation in December, 1873?

Ans. Henry R. Davis; age, forty-five years; residence, Providence, R. I.; occupation, cashier of the Providence Journal; occupation in December, 1873, the same as now.

Int. 2. Was the paper published daily in November, 1873?

Ans. Yes, sir; except Sunday.

Int. 3. Whether or not in the Journal of Dec. 3, 1873, there was published a card purporting to be signed by Messrs. King, Howard, Hopkins, and Remington.

(Abraham Payne, for complainant Moulton, objects to this question as calling for information immaterial to any issue in this case.

A. B. Patton objects on behalf of respondent, William Sprague, for same reason.)

Ans. There was.

Int. 4. Where is the original paper from which that was published?

Ans. Probably it was not saved.

Int. 5. What is the practice at the Journal office about saving such papers?

Ans. Not to preserve them unless requested to do so.

Int. 6. Please produce and annex to your deposition a copy of the card that was published in the Journal.

(Abraham Payne makes the same objection as above; A. B. Patton also the same.)

Ans. This is a copy.

(The copy of the card referred to is hereunto attached and marked "Exhibit AA.")

557 Int. 7. Whether or not on the same Dec. 3, 1873, there was also published in the same issue of the Daily Journal a full copy of the trust mortgage deed from A. & W. Sprague Manufacturing Company, Wm. Sprague, Mary Sprague, Amasa Sprague, Fanny Sprague, and A. & W. Sprague to Zechariah Chafee, and whether the same is substantially a complete copy of the trust mortgage deed, Exhibit A, annexed to the deposition of Zechariah Chafee in this cause.

(Abraham Payne makes same objection as above; A. B. Patton also same objection.)

Ans. It was published, and appears to be a complete copy of the trust mortgage deed marked as stated.

HENRY R. DAVIS.

Subscribed by the said Henry R. Davis in my presence this eighth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

EXHIBIT AA.

Referred to by Henry R. Davis in his foregoing deposition and by him produced and furnished to me as part of his answer to question 6 of his said deposition.

Attest: I. H. Southwick, Jr., examiner.

The undersigned, members of the committee appointed by the creditors of the A. & W. Sprague Manufacturing Company, deem it their duty to say that, although the substitution of Mr. Zechariah Chafee for the gentlemen named in the deed of trust was without their knowledge, in view of the unwillingness of those gentlemen to accept said trust without important guaranties on the part of the

creditors, they consider the selection and acceptance of Mr. Chafee as entirely proper and expedient.

From a long personal acquaintance with Mr. Chafee they are enabled to testify to his eminent fitness for the position, and, fully believing that the interests of the creditors will be best subserved by a general co-operation with the trustee, they earnestly urge all the parties in interest to assist in the faithful execution of
558 the trust. Mr. Ricker, the other member of the committee, being in New York, has not been consulted in regard to this expression.

(Signed) WM. J. KING.
WM. H. HOPKINS.
HENRY HOWARD.
DANIEL REMINGTON.

Deposition of Henry Pitman.

HENRY PITMAN, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. State your name, age, residence, and occupation.

Ans. Henry Pitman; age, sixty-one; residence, Providence; occupation, clerk of the United States circuit court.

Int. 2. How long have you been acting in that capacity?

Ans. About thirty-two years.

Int. 3. Have you before you original bill in equity No. 877, Wm. S. Hoyt against Amasa Sprague, William Sprague, A. & W. Sprague Manufacturing Company, *et al.*, produced from the records of your court?

Ans. I have.

Int. 4. Please annex to this deposition a certified copy of that portion of said bill in equity beginning on page 33 thereof and paragraph marked "99" and ending in paragraph marked "100," down to and including the words "trust deed;" also of that portion beginning on page 34 thereof and paragraph marked "101" and ending in said paragraph with the words "probate court;" also certified copy of specific interrogatory No. 19, included in said bill of complaint and found on page 42 thereof.

(Abraham Payne, on behalf of the complainant Moulton,
559 objects to this question as calling for information immaterial, incompetent, and irrelevant to any issue in this case.

A. B. Patton, on behalf of the respondent, William Sprague, objects for the same reasons.)

Ans. These are the copies called for by the questions.

(The copies referred to are hereunto annexed, marked "Exhibits BB, CC, DD.")

Int. 5. Have you before you the original answers of William Sprague, Amasa Sprague, and the A. & W. Sprague Manufacturing Company to the said bill in equity; are the same produced from the files and records of your court, and whose signatures do the said answer purport to bear?

Ans. I have; they are produced from the files of my court, and they purport to bear the signatures of William Sprague, Amasa Sprague, and the A. & W. Sprague Manufacturing Company, by Amasa Sprague, treasurer, respectively.

Int. 6. Do said answers bear a jurat; and, if so, before whom and when do they purport to have been sworn?

Ans. They do; and they purport to have been sworn to the twelfth day of May, 1876, before Joseph S. Pitman, commissioner of U. S. circuit court for the district of Rhode Island.

Int. 7. Please to annex to this deposition certified copies of all those portions of said answers of Amasa and William Sprague relating to allegations, marked "Exhibits BB and CC," and Int. 19, marked "Exhibit DD," beginning on manuscript page 7 of said answer of said William Sprague, with the last paragraph on the ninth page of the answer of said Amasa Sprague, both said paragraphs beginning with the words "this defendant admits" and ending with the words "of said corporation," and including also the specific answers to said Int. No. 19 in said bill, on page 12 of the answer of said William Sprague and on page 16 of the answer of said Amasa Sprague.

(The documents called for are hereunto annexed, marked "Exhibits EE, FF."

Abraham Payne makes the same objection to this question as above; A. B. Patton also the same objection.)

Ans. I will furnish copies of the same, to be annexed.

560 Int. 8. Please annex to this deposition a certified copy of all that portion of said answer of said A. & W. Sprague Manufacturing Company relating to the allegations hereinbefore exhibited, beginning on manuscript page 6 of said answer with the words "and this defendant admits," including the rest of said sixth page, the whole of the seventh page, and the first paragraph of the eighth page.

(Abraham Payne objects to this question on the same grounds as above; A. B. Patton also on same grounds.)

Ans. I annex copy of the same.

(The copy referred to is hereunto annexed, marked "Exhibit GG.")

Int. 9. Have you before you original bills in equity numbered 878, 982, and 983, being, respectively, cases Charles G. Francklyn *et ux.* against Amasa Sprague, William Sprague, A. & W. Sprague Manufacturing Company, *et als.*; J. Bowers Lee and wife against the

same, and Edwin Hoyt against the same, and are all the same produced from the record of your court?

Ans. I have them before me, and they are produced from the records of my court.

Int. 10. Please annex to this deposition certified copies of those portions of each of said bills in equity beginning and ending with the same words as particularly described in Int. 4 and covering the same subject-matter.

(Abraham Payne and A. B. Patton, Esqs., make same objection as before.)

Ans. I will annex the same.

(The copies referred to are hereunto annexed, marked "Exhibits BB, CC, DD.")

Int. 11. Please annex also certified copies of Int. No. 19 in bills in equity No. 878 and 983, and of Int. 14 in bill in equity No. 982.

(A. Payne and A. B. Patton make the same objection as before.)

Ans. I will annex the same.

(Hereunto annexed, marked "Exhibit DD.")

Int. 12. Have you before you the original answers of William Sprague, Amasa Sprague, and A. & W. Sprague Manufacturing Company in each of the bills in equity numbered 878, 982, and 983, respectively; are the same produced from the files and records of your court, and whose signatures does each of said answers purport to bear?

561

Ans. I have them before me; they are produced from the records of my court, and they purport to bear the signatures of William Sprague, Amasa Sprague, and A. & W. Sprague Manufacturing Company, by Amasa Sprague, treasurer, respectively.

Int. 13. When and before whom does each of said answers purport to be sworn?

Ans. No. 878 purports to be sworn before Joseph S. Pitman, United States commissioner, on the twelfth day of May, 1876; Nos. 982 and 983 before C. Frank Parkhurst, notary public, on the sixth day of April, 1880.

Int. 14. Please annex to this deposition certified copies of all that portion of each of said answers relating to the several allegations and interrogatories referred to in Int's 10 and 11 of this deposition, beginning and ending with the same words specified in interrogatories numbered 7 and 8 in this deposition.

(A. Payne and A. B. Patton make the same objections as before.)

Ans. I annex copies of the same.

(The copies called for are hereunto annexed, marked "Exhibits EE, FF, GG.")

HENRY PITMAN.

Subscribed by said Henry Pitman in my presence this eighth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

EXHIBIT BB.

It is agreed by the respective counsel present that the following is a true and correct copy called for by Exhibit — in each of the several instances referred to in the foregoing deposition of Henry Pitman.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

562 "Your orator further shows that in November, 1873, the A. & W. Sprague Manufacturing Company became embarrassed, and shortly thereafter the said company executed a trust deed of all its property to the defendant, Zechariah Chafee, in which trust deed the said Amasa and William Sprague, individually and as copartners under the firm name of A. & W. Sprague, and also the said Mary Sprague and Fanny joined, and that by subsequent instruments, executed in April, 1874, the said A. & W. Sprague Manufacturing Company and the said Amasa and William Sprague, as composing the firm of A. & W. Sprague, conveyed and assigned all their property to the said Zechariah Chafee for the benefit of creditors; and he alleges that the said Chafee now has or pretends to have all the property so assigned in his possession and control, and to be vested with the title thereof, which he claims to hold for the benefit of the creditors of each and every of the persons and corporations who have executed the said assignment and trust deed."

EXHIBIT CC.

It is agreed by the respective counsel present that the following is a true and correct copy called for by Exhibit — in each of the several instances referred to in the foregoing deposition of Henry Pitman.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

"That all of such property and assets having been turned over and conveyed to said A. & W. Sprague Manufacturing Company, and thereafter to the defendant, Zechariah Chafee, as hereinbefore averred, the said defendants, Mary Sprague and William Sprague, have no property in their possession which can be reached by the said probate court."

563 EXHIBIT DD.

It is agreed by the respective counsel present that the following is a true and correct copy called for by Exhibit — in each of the several instances referred to in the foregoing deposition of Henry Pitman.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

19. "Whether the several deeds of trust purporting to have been executed by the A. & W. Sprague Manufacturing Company and others to Zechariah Chafee and referred to in this bill were so executed?"

NOTE.—The defendants, Amasa and William Sprague, respectively, are required to answer interrogations numbered, respectively, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, 18, 19.

EXHIBIT EE.

It is agreed by the respective counsel present that the following is a true and correct copy called for by Exhibit — in each of the several instances referred to in the foregoing deposition of Henry Pitman.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

This defendant admits that he was a member of the copartnership of Hoyt, Sprague & Co., and that said copartnership carried on a commission business, and further admits that in the months of September and October, 1873, the said firm of Hoyt, Sprague & Co., and also the A. & W. Sprague Manufacturing Company, became embarrassed and suspended payment; and this defendant also admits that the said corporation has duly executed trust deeds of conveyance of all its property to Zechariah Chafee for the benefit of all its creditors, and said Chafee now is vested with the title thereunder for the benefit of creditors of all the property of said corporation.

564 EXHIBIT FF.

It is agreed by the respective counsel present that the following is a true and correct copy called for by Exhibit — in each of the several instances referred to in the foregoing deposition of Henry Pitman.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

19. "The several deeds of trust referred to in this interrogatory were executed."

EXHIBIT GG.

It is agreed by the respective counsel present that the following is a true and correct copy called for by Exhibit — in each of the several instances referred to in the foregoing deposition of Henry Pitman.

Attest: I. H. SOUTHWICK, JR., *Examiner.*

And this defendant admits that, in consequence of the financial disasters of the country in the fall of 1873, said firm of Hoyt, Spragues & Co. and this defendant became embarrassed, and said Hoyt, Spragues & Co. suspended payment in New York, whereby this defendant was also compelled to suspend payment, and afterwards did, on the first day of December, 1873, execute and deliver

to Zechariah Chafee a trust deed of all its property, bearing date the first day of November, 1873, in trust and mortgage to secure such of its creditors as should, within nine months from the date of said deed, bring in and surrender and discharge or agree to extend the time for the payment of their respective debts, and accept therefor the notes of this defendant, bearing even date therewith and payable three years from Jauuary 1st, 1874, with interest thereafter, payable semi-annually, at the rate of seven and three-tenths per centum per annum, till the principal sum was paid, in which mortgage deed the said Amasa and William —, individually and as copartners, and the said Mary Sprague and Fanny Sprague, did also join, they all being stockholders in this defendant corporation, and as such individually liable for all its debts, and the said
465 Amasa and William, as copartners, being also endorsers upon the great mass of the outstanding liabilities of this defendant, and also did thereafterwards, on the sixth day of April, 1874, execute and deliver to said Chafee a general assignment of all its property—

First. For the payment in full, if the assigned property proved sufficient, otherwise ratably, of all the claims of its creditors which had then been, or should thereafter within said nine months be, brought in under said trust mortgage, and extended for the term of time provided therein and the notes secured thereby as aforesaid.

Secondly. The residue to apply in full, if sufficient, otherwise ratably, in payment of all other creditors of this defendant, and which deed of assignment did also provide, among other things, that said Chafee might allow this defendant to run its mills and print works if he deemed it for the best interest of creditors so to do, under which provision, there having been no default under the mortgage, this defendant has remained in possession of its mills and print works, carrying on the business thereof and applying the profits of the same to the payment of the interest under the mortgage.

This defendant avers that within the said nine months creditors representing to the amount of $8,717,450, being all but two of the creditors of the corporation, did come in under said trust mortgage and assent to its terms and accept the extension mortgage notes thereunder, and thereupon did either surrender and discharge or agree to extend the time of payment of their original debts accordingly.

Deposition of Rufus Waterman.

RUFUS WATERMAN, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

566 Int. 1. Please give your name, age, residence, and occupation.

Ans. Rufus Waterman; sixty-seven years; Providence; merchant.

Int. 2. Were you, in October, 1873, connected with any bank in Providence; and, if yes, what bank?

Ans. The National Exchange Bank and the Providence Institution for Savings.

Int. 3. Whether or not there was a gathering of gentlemen representing several banks of Providence that month to consider any propositions from A. & W. Sprague Manufacturing Company; and, if yes, where the meeting was held and how many banks were represented.

(Abraham Payne, on behalf of complainant, objects to this question as immaterial.

A. B. Patton, on behalf of respondent, William Sprague, objects for the same reason.)

Ans. There was, and the meetings were held in the Merchants' Bank directors' room. I don't know how many banks; the creditor banks or a large proportion of them.

Int. 4. Whether or not the meeting was confined to creditors of the A. & W. Sprague Manufacturing Company.

(A. Payne and A. B. Patton make the same objection as above.)

Ans. The meeting was called for the purpose of considering a loan to the Spragues. There were quite a number of people standing around there.

Int. 5. Whether or not you were one of the committee appointed at one of these meetings.

Ans. I was.

Int. 6. Whether or not you acted as such committee man.

Ans. I did.

Int. 7. How much time did you give to the duties of that committee?

Ans. Two or three days.

Int. 8. Did that committee make a report, and was said report printed?

Ans. They did, and it was printed.

Int. 9. Have you here a printed copy of that report, and will you annex it to this deposition?

567 (A. Payne objects to this question as incompetent, irrelevant, and immaterial.)

Ans. I have; there it is.

(The report referred to is hereunto annexed, marked "Exhibit HH.")

RUFUS WATERMAN.

Subscribed by said Rufus Waterman in my presence this eighth day of May, A. D. 1884.

I. H. SOUTHWICK, Jr., *Examiner.*

EXHIBIT HH.

Referred to by Rufus Waterman in his foregoing deposition.

PROVIDENCE, *October* 31, 1873.

The committee appointed at a meeting of the representatives of various banks of the city of Providence to investigate the affairs of the A. & W. Sprague Manufacturing Company and the various concerns depending upon it respectfully report they have given the whole subject their earnest and careful attention, and from the accounts which the company has placed before them they find—

The A. & W. Sprague Manufacturing Company comprises: Mrs. Fanny Sprague, Mrs. Mary Sprague, Mr. Amasa Sprague, Senator William Sprague, and two sons and two daughters of Mr. Edwin Hoyt.

The assets of this corporation consist of—

The Baltic Mill	76,000 spindles	
Natick Mills	42,000 spindles	
	118,000 spindles	
Which we value at $15 per spindle, and which includes a large number of houses and many acres of land		1,770,000
455 shares of the 5,000 shares of the Quidnick Company, at $374		170,000
(The condition of this company will be shown in subsequent account.)		
568 United States Flax Manufacturing Company, 33,000 spindles used in manufacturing print cloths, at $15		495,000
Cranston Print Works, with houses and lands belonging to it		1,100,000
Augusta (Me.) estate, including 40,000 spindles (which property has recently been valued by disinterested parties at $1,482,000)		1,200,000
Bank and other stocks (after striking out a large amount as worthless or of doubtful value)		1,044,000
Real estate in Cranston and elsewhere (upon basis of 2¼c. per foot in Cranston and moderate valuations elsewhere) as per Schedule A		3,615,500
Cash advanced to the following companies:		
Rhode Island Horseshoe Company	49,000	
Sprague Mowing Machine Company	613,000	
Comstock Foundry Company	87,000	
Point Street Iron Works	182,000	
Wilcox Caloric Engine Company	37,000	
American Horse Nail Company	14,000	
In all	982,000	

Valued at		633,000
Personal man'f'g property in various mills and print works, including prints and goods in store		1,750,000
A. & W. Sprague (their indebtedness, see personal account following)		1,375,000
Cash on hand	$180,000	
Notes receivable (considered good)	60,000	
Accounts receivable (considered good)	240,000	
		480,000
Due from Wm. Sprague, adm'r estate Byron Sprague		53,000
Wm. Sprague's special in Wight & Tillinghast		150,000
Morgan mill estate		50,000
City of Augusta bonds		57,000
Landed property, not specified above, in Kansas and elsewhere, costing $124,000, estimated		50,000
		$13,992,500

569 The indebtedness of the corporation is upon notes and acceptances 3,130,000

Due to the Quidnick Co.		307,000
Due Wm. Sprague, guardian (Hoyt's)		220,000
Collins and Fenn (advances on goods)		306,000
Wight & Tillinghast		50,000
Flax Co.'s accounts and notes		150,000
Cotton, cloth, call loans, and other accounts		730,000
Hoyt, Sprague & Co.'s acceptances outstanding	$5,462,300	
Less amount due from H. S. Co.	2,065,000	
		3,397,300
		$8,290,300

The private property of the stockholders in this corporation is liable for the company debts.

The firm of A. & W. Sprague, both members of which are stockholders in the corporation, has assetts as follows:

1,654 shares First National Bank, Providence		165,400
500 " Second National Bank, Providence		50,000
2,164 " Quidnick Co., at 374		809,336
215 " Washington & Georgetown R. R. Co., at 70		15,050
1,855 " Kennebec Land and Lumber Co., at 100		185,500
7 " R. I. Horse Shoe Co.		700
200 " R. I. Safe Deposit Co. (total, 500)		20,000
Kennebec Land and Lumber Co. account		18,587
Real estate in Maine (lumber land)		20,000
Columbia Water Power Co.		116,000
Bills receivable		80,500
Coburn Land Company (400,000 acres)		1,457,000
Interest in four schooners		23,000
		$2,961,073

570 Liabilities:

Wm. Sprague, trustee for Almyra Sprague	124,000
A. & W. Sprague Manufacturing Company	1,375,000
Bills payable	1,109,000
Wm. Sprague's individual note	25,000
	$2,633,000

In addition to these assets is the interest of A. & W. Sprague in Hoyt, Sprague & Company, valued at $850,000.

The individual property of Mrs. Fanny Sprague is—

802 shares Quidnick Company	300,000
One-third homestead estate and life interest in balance, fee of thirds being in A. & W. (total value reckoned here)	125,000
House on Young Orchard Ave. and lots on Pitman street	60,000
Bank stocks	10,000

Mrs. Mary Sprague has—

601 shares Quidnick Company	228,140
Homestead estate	100,000
Bank stocks	100,000

Amasa Sprague—

Ladd farm, Warwick, 180 acres, with houses and other buildings	75,000

William Sprague—

Washington estates	130,000
Land and houses, Peace street, Providence (40,000 feet)	25,000

Hoyt children—

816 shares Quidnick Company	305,184
Due from Wm. Sprague, guardian (other individual property of these not known)	220,000
	$1,678,324

571 The further assets and liabilities of the A. & W. Sprague Manufacturing Company appear to be for $\frac{129}{136}$ of the Perkins Sheet-Iron Company (the remaining seven shares being owned by responsible parties).

This company's assets amount to		$481,000
From which deduct depreciated machinery (of a total valuation of $26,000)	$20,000	
And stock of Sprague Mowing Machine Company	225,000	
		245,000
Balance assets		$236,000
The liabilities are (chiefly in notes)		545,000
Leaving excess of indebtedness		$309,000

Of which we place A. & W. S. liable for $\frac{1}{1}\frac{2}{3}\frac{9}{6}$, $293,000.

The Sprague Mowing Machine Co. (of which the Perkins Sheet-Iron Co. own $\frac{3}{4}$, but for the debts of which A. W. & S. are reliable to full amount, other stockholders contributing $\frac{7}{1}\frac{}{3}\frac{}{6}$ of this three-quarter interest) have assets including one-half of Comstock Foundry Company's stock	$514,000
We deduct for depreciation	44,000
	$470,000
Liabilities are	702,000
Leaving indebtedness in excess of assets	$232,000

The Wilcox Caloric and Steam Engine Co. have assets standing upon their books, $48,700.

We value the same at	$15,000
Their liabilities are	53,000
Balance, being excess of liabilities	$38,000

One-half of the stock of this Co. belongs to A. & W. S.; $\frac{1}{5}$, at least, is owned by responsible parties. We count the indebtedness of A. & W. S. as $\frac{5}{7}$ of above balance, $27,143.

572	The assets of the R. I. Horseshoe Co. by their books appear to be	$527,000
	Which we reduce	10,000
		$517,000
	The liabilities amount to	240,000
	Balance of assets	$277,000

$\frac{1}{1}\frac{1}{3}\frac{6}{3}\frac{5}{8}$ of this company belongs to the Perkins Sheet-Iron Co., and makes this item in their assets good, but does not add further to this account, because included in assets of Perkins Sheet-Iron Co., as above.

The Comstock Foundry Company (another corporation) have assets, considered good, amounting to	$163,000
And liabilities	89,000
Balance	$74,000

Of which A. & W. Sprague Manufacturing Company own $\frac{94}{520}$ or $13,350.

We have arrived at the value of the Quidnick Company's property, as per following statement, given in verification of previous figures:

Quidnick, two mills	31,000 spindles.		
Arctic Mill	27,000 "		
	58,000 "	at $25	$1,450,000

(This covers 268 acres of land and many houses and stores.)

Due from A. & W. Sprague Manufacturing Company	296,000
Personal property	125,000
Total	$1,871,000

Divided into 5,000 shares.
Liabilities, none.

573 With reference to the affairs of the Atlantic De Laine Company, we find that neither the A. & W. Sprague Manufacturing Company nor either of its stockholders are stockholders in that corporation.

Hoyt, Spragues & Company are under acceptance for the De Laine Company for $2,200,000, and the De Laine Co. owe Hoyt, Spragues & Co. on account $2,000,000 more.

Estimating the fixed property of the mill company at one-half the valuation which stands against it upon its books, say $2,400,000, the De Laine Company can pay at least $3,000,000 upon its indebtedness to Hoyt, Spragues & Company, so that the assets of Hoyt, Spragues & Company may be reduced by $1,200,000, in the event that the property of the De Laine Co. shrinks to the extent of 50 per cent. of its appraised value.

We come now to the value of the interests of Amasa & William Sprague in the house of Hoyt, Spragues & Co.

The statement made by this house says the indebtedness, outside of A. & W. Sprague Atlantic and Riverside, is about $900,000, all covered by sales or by goods on hand.

After careful review of their books they estimate copartnership assets in excess of liabilities	$2,200,000
Mr. Hoyt estimates his private property at	1,500,000
Leaving available assets at	$3,700,000

Which may be affected by the three accounts above mentioned.

We consider Mr. Hoyt's interest in H. S. & Co. and his private property makes the account of the De Laine Co. with H. S. & Co. good, he being a stockholder in the De Laine Co.

574 If this is correct, the interest of Amasa & William Sprague in the house of H. S. & Co. will add to their assets, as previously estimated ---------- $850,000

Unless there is loss by the Riverside Mill, which is not probable.

As the result of all this examination, we consider the assets of the A. & W. Sprague M'f'g Co. to be	19,495,247
And the liabilities of the A. & W. Sprague M'f'g Co.	11,475,443
Surplus	$8,019,804

Your committee, in making the above detailed report of the condition of the A. & W. Sprague Manufacturing Company, have endeavored to comply fully with the spirit of the following resolutions under which they were created:

Resolved, That, in the opinion of the representatives of the banks of this city, aid ought to be extended to the A. & W. Sprague Manufacturing Company to enable it to meet its maturing obligations, provided a committee shall, upon examination of the affairs of the company, report that the sum of one million dollars requested will be sufficient to meet the probable requirements of the company, and provided that the mortgage security offered therefor shall be sufficient.

Resolved, That James Y. Smith, Seth Padelford, Rufus Waterman, and George F. Wilson be a committee to make the examination, and said committee are authorized to take the opinion of counsel upon the validity of the proposed mortgage.

To determine whether the mortgage proposed would be valid and free from objection under the provisions of the bankrupt act, they were compelled to ascertain whether the amount of aid asked would, in all reasonable probability, be sufficient to enable the company to meet its maturing obligations in the regular course of business. The unsettled condition of financial affairs and of business at the present time and the large amount of obligations of the company maturing during the next ninety days preclude the possibility of your committee reporting that the sum of one million dollars would
575 enable the company to meet its engagements regularly in the future, and, as in the event of a failure to do so the validity of the security might be questioned, your committee, under the advice of counsel, are of opinion that the sum asked for cannot safely be furnished.

Upon coming to this conclusion your committee were requested by the company to express their recommendation of the best course to be taken, under the circumstances, to enable the company to secure to its creditors the payment of their claims and to preserve

as far as possible from shrinkage the vast available property in the hands of the company.

They therefore recommended that the A. & W. Sprague M'f'g Co. and the individuals comprising that corporation mortgage all their property to three trustees, who shall practically have all control and management of the entire property.

These trustees to issue notes to an amount which shall fully cover the amount of present indebtedness, these obligations having three years to run and drawing semi-annual interest at the rate of seven and three-tenths per cent. per annum, with the right reserved to pay five per cent. of the debt as often as in their judgment shall be practicable.

It is believed that all the creditors will accept these evidences of indebtedness, and if the trustees have the full authority asked for them they will be able to avert a great calamity to thousands of operatives, make the mill properties valuable, prevent an immense further shrinkage of values, and pay in full the indebtedness of the A. & W. Sprague Manufacturing Company, together with that of all its depending establishments.

It being the duty of the trustees to convert the property and pay the debts at as early a day as possible, it is not unlikely that the whole indebtedness may be cancelled in much less time than the three years.

Respectfully submitted,

JAS. Y. SMITH,
SETH PADELFORD,
RUFUS WATERMAN,
GEO. F. WILSON,
Committee.

576 *Deposition of Henry Howard.*

HENRY HOWARD, of Coventry, in the county of Kent, in the State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. What is your name, age, residence, and occupation?

Ans. Henry Howard; age, fifty-eight; Coventry, R. I.; occupation, manufacturer.

Int. 2. Were you on the committee of creditors of the A. & W. Sprague M'f'g — in November, 1873?

Ans. I was named as one of the first committee in my absence.

Int. 3. Were you a creditor or did you represent any creditor?

Ans. I was not a creditor directly, but I was a stockholder in various corporations.

Int. 4. Whether or not that committee took any action about or

consequent upon the appointment of Mr. Chafee as trustee, and, if yes, what action.

(A. B. Patton, on behalf of Wm. Sprague, respondent, objects to this question as immaterial.)

Ans. I don't think the committee to which you referred, or at least to which I referred, took any action. My declining to be a member of it, as I remember, broke that committee up. It seems to me now that I was afterwards put on another and larger committee, whose duty it was to see what could be done in regard to the selection of a committee to act as trustees. As the matter now comes to me as I talk about it, I perceive that I should have said, perhaps, trustees instead of committee, when I referred to my first appointment. I was named as one of three to whom the property should be intrusted, in the first place, and after that as one of a committee of five, and on that committee I did act. But that was appointed for the purpose of trying to get some trustees to take
577 the property, I think. Yes, the committee did take some action. If I remember, there were several boards of trustees suggested. Finally, there was one which, I think, was made up of Amos D. Lockwood, George C. Nightingale, and Rufus Waterman. We were very desirous that they should serve. There was a meeting held in Weeden's building, I think, in the office of Thomas C. Greene. Messrs. Lockwood, Nightingale, and Waterman were present, with Mr. Payne and Mr. Greene, I think, as their counsel. They were very desirous of having it determined whether they would become in any event personally liable. The matter was discussed pretty generally. We endeavored to get those gentlemen to stand on this board. As I recall it, they retired with Mr. Payne, and probably Mr. Greene, to another room connected with the office, and when they came back it was understood by us that Mr. Payne declined to give them the assurance as to their freedom from liability which they required. I don't mean to say that that was a positive and express refusal on Mr. Payne's part; but I was satisfied that he would not give them any such assurance, and went to Mr. James Tillinghast, who was present as counsel for the Spragues, and told him it would be of no use to make any further effort to get those gentlemen to act. The meeting broke up without anything being done, and the next day, I think, I heard of Mr. Chafee's appointment. The general desire on the part of the creditors was that there should be some trust conveyance made by the Spragues. This committee of five held a meeting in Deacon King's office and took some action in the direction of approving Mr. Chafee's appointment, the object being to tranquillize, so to speak, the feeling in the community.

Int. 5. Do you recollect whether at that meeting a card was prepared for publication by the committee?

(A. B. Patton objects to this question as immaterial.)

Ans. Yes; I believe there was.

Int. 6. Do you recollect what was done with it?

(A. B. Patton objects to this question as immaterial.)

Ans. I think it was signed by four (one of that committee was a New Yorker) and published in the papers.

Int. 7. To what did it relate?

(A. B. Patton makes same objection.)

578 Ans. It was in the direction of showing our approval of Mr. Chafee's appointment, although we knew nothing about it until it was done.

Int. 8. Whether or not you have been engaged in the manufacture of cotton goods, and to what extent.

Ans. I have been engaged in that business about twenty-five years.

Int. 9. In what way?

Ans. Sometimes as selling agent; sometimes in the management of mills as president of companies.

Int. 10. Have you any personal knowledge of any mills known as the Sprague Mills; and, if so, what ones?

Ans. I suppose I have been in all of the Rhode Island mills and the Baltic. My residence has been within about three miles of the mills on the Pawtuxet river.

Int. 11. Was there not a great commercial panic in the autumn of 1873?

Ans. Yes, sir; about that time.

Int. 12. Whether or not that panic affected the salable value of these mills; and, if so, to what extent.

(A. B. Patton objects to this question as incompetent, irrelevant, and immaterial, it also not appearing that the witness has competent knowledge to testify to the fact.)

Ans. Very materially; to such an extent that it would not have been thought advisable to sell them at that time.

Int. 13. What, in your judgment, is the effect upon the property value of such mills in stopping their operation and ceasing to run them?

(A. B. Patton makes the same objection as the last.)

Ans. Very injurious; no doubt of that.

Int. 14. Why?

(A. B. Patton objects for same reason stated in objection last referred to.)

Ans. For various reasons. It is understood among manufacturers that machinery itself deteriorates more when mills are still than when they are running—the machinery rusts. It is very bad
579 to have the help scatter. The effect is also rather demoralizing when the mills are still; they become unpopular with the help. There is another reason, not often thought of, perhaps, in this—mills which are running all the time keep up with the improvements as they are made from time to time, while those which are still become antiquated.

Int. 15. Is there ordinarily any difference in the salable value of a cotton mill in operation and of one idle; and, if there is, is that difference great or little, and which way?

(A. B. Patton objects to this question as immaterial.)

Ans. That would depend upon how long a mill was still. If it had been still a long time the difference would be considerable. A mill would ordinarily sell much better if it was running, other things being equal.

Cross-examination by A. B. PATTON, Esq., subject to his objections:

X Int. 1. Do you recollect what time of the day the meeting you have referred to as being held in the office of Thomas C. Greene, Esq., was held?

Ans. Yes.

X Int. 2. What time?

Ans. It was in the early evening. The gas was lighted, I remember.

X Int. 3. About how long did the interview last?

Ans. I should think something like an hour. I don't remember exactly, of course.

X Int. 4. Were the creditors consulted by the committee who issued the card referred to in your direct examination approving Mr. Chafee's appointment before the issuing of said card?

Ans. I can't remember anything in regard to ordinary conversation upon the subject. I have no recollection of any meeting of the creditors. The action of the committee, however, was in accordance with the general feeling of the creditors, so far as that came to my knowledge.

HENRY HOWARD.

Subscribed by said Henry Howard in my presence this eighth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

580 *Stipulation No.* 1.

FRANCIS D. MOULTON *v.* ZECHARIAH CHAFEE *et al.* } Eq. No 2030.

In the above-entitled cause it is stipulated and agreed that the copy of the deposition of William J. King, taken in the case of Zechariah Chafee *v.* Fourth National Bank *et al.* for use in the supreme judicial court of the State of Maine, may be read in evidence as if formally taken herein, subject to all objections, which said copy

is hereunto annexed and marked "Exhibit II" and made a part of this stipulation.

FRANCIS D. MOULTON,
By his solicitors, A. & A. D. PAYNE.
WILLIAM SPRAGUE,
By his solicitor, A. B. PATTON.
EVAN RANDOLPH,
By his solicitors of record, MOWRY & COMSTOCK,
By R. B. COMSTOCK.
ZECHARIAH CHAFEE,
Trustee and Assignee,
By his solicitor, C. FRANK PARKHURST.
T. C. GREENE, *Receiver,*
By MINER & ROELKER, *Solicitors.*

581 EXHIBIT II.

Referred to in the foregoing stipulation No. 1.

Attest: I. H. Southwick, Jr., examiner.

ZECHARIAH CHAFEE
vs.
FOURTH NATIONAL BANK *et al.* } In Equity.

PROVIDENCE, R. I., *March* 19, 1879.

Present: William L. Putnam, for complainant; William S. Opdyke and James D. Fessenden, for defendants.

Deposition of WILLIAM J. KING for complainant, he first having been sworn to testify the truth in the matter in controversy.

Questions by WM. L. PUTNAM, Esq.:

Int. 1. What is your name, age, residence, and occupation?

A. My name is Wm. J. King; age, 75; Providence, R. I.; dealer in cotton; my firm's name is W. J. King & Son.

Int. 2. How long have you been in business in Providence?

A. I have been in business on my own account since 1836, as dealer in cotton.

Int. 3. Were your firm creditors of A. & W. Sprague Manufacturing Company November 1, 1873; and, if yes, for about what amount?

(Objected to as immaterial.)

A. We were creditors to the amount of two hundred and thirty-two thousand dollars for cotton sold them.

Int. 4. Were you or not present at a meeting of the creditors of the A. & W. Sprague Manufacturing Company November 6, 1873, or thereabouts; and, if yes, where was it held and how many others were present?

(Objected to as immaterial, as things done by other parties.)

A. I was present at the meeting called at 11 o'clock a. m., on Thursday, November 6, at the Horse Guards' armory, in Providence. The room was full; the number I cannot state. It was a large hall.

582 Int. 5. Whether or not there had been public notice given of that meeting.

(Objected to as immaterial.)

A. There was.

Int. 6. Whether or not any committee was appointed at that meeting; and, if yes, for what purpose and who composed it.

(Same objection as to No. 4 question.)

A. There was a committee appointed at that meeting; committee were composed of five, Wm. J. King, Henry Howard, W. H. Hopkins, and Daniel Remington, all of Providence, and J. L. Riker, of New York. They were appointed to examine a trust deed and submit the same to counsel and nominate trustees.

Int. 7. How much of the day was the meeting in session?

A. I do not recollect the time; the committee reported the same day.

(Objected to as immaterial, things done by other parties.)

Int. 8. Whether or not there was considerable discussion at the meeting.

(Same objection.)

A. There was a long and animated discussion.

Int. 9. Whether or not the final action of the meeting was unanimous.

(Same objection.)

A. Yes.

Int. 10. Whether or not any person was made chairman of the committee.

(Same objection.)

A. Wm. J. King was chairman and J. L. Riker was secretary.

Int. 11. Was not Mr. Riker a creditor of the A. & W. Sprague Manufacturing Company; and, if yes, for what amount and what was his occupation?

(Same objection.)

A. He stated he was a creditor, and I think the amount was sixty thousand dollars, payable in gold; he was a drug dealer.

Int. 12. What was the residence of Mr. Hopkins and his occupation? Was he a creditor and to what amount?

(Same objection.)

583 A. His residence is Providence; occupation a coal dealer; he was a creditor to a very large amount; I don't know the amount.

Int. 13. What was the residence of Daniel Remington and his occupation? Was he a creditor and to what amount?

(Same objection.)

A. Providence; dealer in cotton and cotton goods. He was a creditor to a large amount.

Int. 14. Where did Mr. Howard then reside, and what official position then did he occupy?

(Same objection.)

A. I should say out of town, near Providence; don't know whether he was Governor or not at the time. He was a manufacturer of cotton goods.

Int. 15. Was he a director in any bank?

(Same objection.)

A. I am not sure about that.

Int. 16. Please state whether this committee nominated trustees; and, if yes, who they were.

(Same objection.)

A. They did nominate three—Rufus Waterman, Amos D. Lockwood, George C. Nightingale.

Int. 17. Whether the committee or any of them did employ counsel; and, if yes, what counsel.

(Same objection.)

A. I think they did; I think Judge B. F. Thomas, of Boston, Abraham Payne, of Providence; I am not quite sure whether this committee employed Thos. C. Greene or the proposed trustee.

Int. 18. Whether or not a Mr. Smith, of New York, was employed as counsel; and, if so, by whom.

(Same objection.)

A. He was employed to examine the deed of trust by the committee.

Int. 19. Do you recollect the name of his firm in New York?

A. I do not recollect.

Int. 20. Was it or not Martin & Smith?

A. I think it was.

Int. 21. Whether or not he was a lawyer of apparent experience and ability.

584 (Same objection.)

A. Evidently of marked ability and large experience.

Int. 22. Please state what was done by these lawyers the committee employed in relation to this deed of trust, if anything.

(Objected to on the same ground as above; also as inadmissible and as hearsay.)

A. They were several days examining it very critically, sentence

by sentence and word by word. They made such alterations as they thought necessary.

Int. 23. Whether or not the A. & W. Sprague Manufacturing Company were represented by counsel at these meetings.

(Same objection.

A. Yes, sir.

Int. 24. Whether or not any of the committee of creditors were present at these meetings or any of them.

(Same objection.)

A. They were most of the time.

Int. 25. Whether or not, as the result of these meetings, the form of the trust deed was agreed upon.

(Same objection.)

A. Yes, sir.

Int. 26. Whether or not such form was satisfactory or otherwise to the committee and their counsel.

(Same objection.)

A. It was fully.

Int. 27. Whether or not that trust deed was afterward executed by A. & W. Sprague Manufacturing Company.

(Same objection.)

A. I didn't see it executed.

Int. 28. Do you — what became of the original form of that deed that was approved by the committee and their counsel?

(Same objection.)

A. I don't know.

Int. 29. Whether or not the gentlemen named as trustees finally executed the deed as trustees.

(Same objection.)

A. They did not.

Int. 30. State whether or not you received on or about November 29, 1873, a letter from them in relation thereto.

585 (Same objection.)

A. I did receive a letter from them as chairman of the committee by their attorney, Mr. Payne. I have not the letter.

Int. 31. Do you know where that letter is?

A. I do not.

Int. 32. Have you a copy of that letter?

A. I have not.

Int. 33. Please examine the paper produced to you and state whether, to your best recollection, it is a copy of that letter.

A. It is, and I annex it to this deposition.

(Objected to as immaterial, but no objection as to secondary evidence.)

Int. 34. Whether or not after that letter was received the name of Mr. Chafee was substituted as trustee; and, if so, by whom?

(Same objection.)

A. After receiving this letter we were in great trouble to know what to do, the Sprague's lawyer fearing every moment that attachment would be put upon the property, as many claims were due. We pressed the trustees to reconsider, and they replied they were unwilling to take any hazard in this business, but they would probably go to Boston the next day and see Judge Thomas about it; but the next day, early in the morning, it was announced that Mr. Zechariah Chafee had been appointed and accepted the deed of trust, it being necessary to protect the property from attachment immediately.

Int. 35. How long had you then been in consultation with the three persons appointed as trustees in this matter?

(Same objection.)

A. I should say from the 6th to the 29th of November, 1873?

Int. 36. Whether or not any of the committee objected to the substitution of Mr. Chafee as trustee.

(Same objection.)

A. None that I know of.

Int. 37. How long have you known Mr. Chafee?

A. For many years.

Int. 38. Whether or not at that time you considered him a suitable man for this trust.

586 (Same objection.)

A. I knew of no man in Rhode Island or elsewhere that I thought as suitable.

Int. 39. Whether or not you, in your individual capacity or as chairman of the committee, made any objection to the appointment of Mr. Chafee as trustee.

(Same objection.)

A. No, sir; I did not.

Int. 40. Whether or not any members of the committee made any such objection, either to you or to the officers of the corporation, within your knowledge.

(Same objection.)

A. No, sir.

Int. 41. Please examine paper marked "No. 2, H. P., clerk circuit court," and state whether you are familiar with the same.

A. I am.

Int. 42. Please state whether the same differs in any particulars

from the form of the trust deed that was finally approved by the committee and their counsel; and, if at all, in what particulars.

(Same objection.)

A. I should say that this was just what the attorneys and committee approved, so far as my knowledge extends. I cannot remember the details of words and sentences.

Int. 43. Whether or not the identical paper here produced has been in your personal possession for a long time.

A. Yes, sir.

Int. 44. Whether or not you are familiar with its contents.

A. Yes, sir.

Int. 45. Whether or not you have ever observed in it any change from the form approved by the committee and their counsel, except the name of the trustee.

A. No, sir.

Int. 46. Whether or not you, in November, 1873, considered it for the interest of the creditors that the property should be wound up and sold out or should be operated in the manner provided by the form of the trust deed.

(Same objection.)

587 A. It was expected that the mills and print works should be run, as before, for the interest of the creditors. (Reads deed of trust: "And whereas the preservation of the manufacturing properties of said A. & W. Sprague Manufacturing Company and the best interest — creditors require, to prevent great loss and shrinkage, that the business of the mills and print works shall in the meantime be continued.")

(Objected to as not being responsive.)

In my opinion it was for the interest of the creditors to run the mills, emphatically.

Int. 47. Did you at that time hear any different opinion expressed by any of the creditors or by any member of the committee?

(Same objection, and also as hearsay.)

A. No, sir.

Cross-examination.

Questions by JAMES D. FESSENDEN, Esq.:

X Int. 48. State whether or not the committee, of which you are a member, were consulted in regard to the appointment of Mr. Chafee, as trustee, before the execution of the trust deed.

A. They were not.

X Int. 49. Are you a party to a suit or bill in equity brought by a large number of the creditors of A. & W. Sprague Manufacturing Company to remove Mr. Chafee from his trust?

A. No, sir.

Direct examination resumed:

R. D. Int. 50. Do you recollect whether or not the committee of creditors published a card in relation to Mr. Chafee's appointment?

(Same objection.)

A. I do not recollect.

W. J. KING.

No. 1.

Copy Letter Annexed to Wm. J. King's Deposition.

H. P., clerk circuit court.

Wm. J. King, chairman, etc.:

We have given to the proposed deed of trust of the Sprague property, to be executed by us as trustees, the most careful
588 consideration, with an earnest desire to see our way clear to accept the same, but, acting under the advice of counsel, we must decline to do so, unless creditors, by some previous action on their part, will protect us against personal liability.

Very respectfully,

RUFUS WATERMAN.
A. D. LOCKWOOD.
GEO. C. NIGHTINGALE.

Providence, Nov. 29, 1873.

No. 2.

H. P., clerk circuit court.

Annexed to deposition of William J. King.

This indenture, made and entered into this first day of November, A. D. eighteen hundred and seventy-three, by and between the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island and transacting business in the city of Providence; William Sprague, of South Kingston; Amasa Sprague, of Cranston; Mary Sprague, widow of William Sprague, deceased; Fanny Sprague, widow of Amasa Sprague, deceased, of said Providence, all in said State, and the said Amasa Sprague and William Sprague, as copartners doing business under the firm of A. & W. Sprague, as parties of the first part, and Zechariah Chafee, of said Providence, as party of the second part, witnesseth:

Whereas the said A. & W. Sprague Manufacturing Company and the said A. & W. Sprague and said Amasa Sprague and William Sprague, individually, are now indebted or under liability, primary or secondary, in divers sums of money to divers persons, amounting in the aggregate to about the sum of fourteen millions of dollars, and which indebtedness and liabilities said parties of the first part are desirous of funding and securing by the conveyance of their estates and properties to said party of the second part

as mortgagee in trust, as hereinafter provided, and which conveyance to him as mortgagee in trust said party of the second part has agreed to and by signing these presents does accept; and

589 Whereas for this purpose and to this end said A. & W. Sprague Manufacturing Company have executed their sixteen thousand five hundred negotiable promissory notes, all bearing even date with these presents and made payable to the order of said A. & W. Sprague and by them endorsed, payable three years from January 1, 1874, with interest from January 1, 1874, payable semi-annually, at the rate of seven and three-tenths per centum per annum, till said principal sum is paid, whether at or after maturity, and all instalments of interest in arrear to bear interest at the rate aforesaid till paid, but reserving the right to pay said notes before maturity in instalments of not less than five per centum of the principal thereof at any time the semi-annual interest becomes payable, principal and interest payable at the place of business of said A. & W. Sprague Manufacturing Company, in said Providence, said notes being of the amounts and lettered and numbered as follows, to wit: Two thousand thereof for fifty dollars each, lettered A No. 1 to A No. 2000, both inclusive; three thousand thereof for one hundred dollars each, lettered B No. 1 to B No. 3000, both inclusive; three thousand thereof for two hundred dollars each, lettered C No. 1 to C No. 3000, both inclusive; three thousand thereof for five hundred dollars each, lettered D No. 1 to D No. 3000, both inclusive; four thousand thereof for one thousand dollars each, lettered E No. 1 to E 4000, both inclusive, and fifteen hundred thereof for five thousand dollars each, lettered F No. 1 to F No. 1500, both inclusive, and all of which notes have been placed in the hands of said party of the second part, to be by him used and applied to the payment or retiring of such of the present outstanding indebtedness and liabilities aforesaid as the holders thereof shall within nine months from the date of these presents bring in and surrender and discharge or agree to extend for the term and according to the provisions of said notes, said notes as so issued by said trustee to be countersigned by him; and

Whereas the preservation of the manufacturing properties of said A. & W. Sprague Manufacturing Company and the best interests of the creditors require, to prevent great loss and shrinkage, that the business of the mills and print works shall in the meantime be continued:

590 Now, therefore, said parties of the first part, in consideration of the premises and of the trusts hereinafter declared, and in further consideration of one dollar to them paid by said party of the second part, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said party of the second part, his heirs, executors, administrators, and assigns, all the property, real, personal, and mixed, not exempt from attachment by law which the parties of the first part or any or either of them have and hold in the following city and towns in the State of Rhode Island, viz., the city of Providence, the towns of Cranston, Johnston, Coventry, East Greenwich, West Greenwich, South Kingston, Warwick, Paw-

tucket, Lincoln, North Providence, Cumberland, East Providence, and North Kingston; in the following towns of the Commonwealth of Massachusetts, viz., Attleborough and Palmer; in the following counties of the State of Maine, viz., Somerset, Piscataquis, Franklin, Kennebec, Penobscot, and Aroostook; in the following counties of the State of New Hampshire, viz., Grafton, Coos, Carroll, and Belknap; in the towns of Richmond and Lexington, in the State of South Carolina; in the city of Washington, in the District of Columbia; in the following towns of the State of Connecticut, viz., Sterling, Sprague, Scotland, and Windham, including in what is known as the Baltic Mill property, in said State of Connecticut, 4 iron water-wheels, 4 rotary pumps, 3 openers, 20 lappers, 412 cards, 19 double heads, 6 doublers, 5 grinders, 19 railway heads and troughs, 30 drawing frames, 25 coarse speeders, 49 fine speeders, 275 spinning frames, 34 spoolers, 16 slasher-warpers, 4 slashers, 20 warpers, 12 dressers, 36 pairs mules, 1,973 looms, 1 boring machine, 1 upright drill, 2 iron planers, 8 turning engines, 1 circular saw, 1 vertical saw, one wood planer, 1 gear-cutter, 2 bolt-cutters, 1 run of grist-mill stones, 1 bolter for grist-mill, 1 corn-cracker, 1 steam fire-engine, 3 gas retorts, and all the taps, dies, and tools appertaining to the machine and blacksmith's shops; and including in what is known as the Oneco property, in said State of Connecticut, 250 stone hammers, 750 drills, and the tools and apparatus used in quarrying and cutting stone; and including in what is known as the South Windham property the saws and tools in the saw-mill; and
591 including the hay in barns and elsewhere in either of said towns of the State of Connecticut; and including, generally, within the foregoing description, the two homestead estates, the Washington and Cove street lot, the Dyer-street lot, the Dorrance-street lot, the Pine and Page street lot, the Peace-street lot, the Marine railway property, the lot on the corner of Hope and Waterman streets, the Fenner-avenue lot, the Martin-street property, the George, Pitman, and Ives street property, the Elmwood store property, and the Ninth-ward property, in the city of Providence; the Cranston Print Works property, with about eighteen hundred and seventy acres of land and improvements thereon, in the town of Cranston; the Natick Mills property, with about eight hundred and thirty acres of land and improvements thereon, and the Ladd farm, with about one hundred and one acres of land and improvements thereon, sometimes called the Coweset estate, in the town of Warwick; the Morgan Mill property, with about six hundred and twenty-five acres of land and improvements thereon, in the town of Johnston; the homestead estate in South Kingston, with about four hundred and twenty-eight acres of land and improvements thereon; the mill property in Augusta, Maine, with about four hundred acres of land and improvements thereon; the mill property in Palmer, Massachusetts, with about seven acres of land and improvements thereon; the estates in the city of Washington, with about six acres of land and improvements thereon; the property in the city of Columbia, in the State of South Carolina, with about four hundred acres of land and improvements thereon; and also all other the estate and

property, real and personal, of every name and nature, not exempt from attachment by law, wherever situate and by whatsoever muniments of title evidenced, which any or either of the parties of the first part have or may be entitled to, in possession or action, reversion or remainder, together also with all goods, stock, and supplies, manufactured, unmanufactured, and in process of manufacture, and all fixtures, machinery, tools, and other personal property of every kind which said A. & W. Sprague Manufacturing Company may at any time or from time to time hereafter have, either in lieu of or in addition to those now on hand, but excepting from this conveyance
592 all shares of capital stock in any and every corporation, wherever located, belonging to any or either of the — first part, the same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security to secure the performance of the conditions of this instrument:

To have and to hold said granted and bargained premises, with all the rights, privileges, and appurtenances thereof, unto and to the use of him, the said party of the second part, his heirs, executors, administrators, and assigns, in trust for the intents and purposes and with, under, and subject to the powers and provisos hereafter contained, but subject, nevertheless, to the following conditions—that is to say, upon condition that if said parties of the first part or any or either of them, their heirs, executors, administrators, or assigns, or any person for them or in their behalf, shall well and truly pay or cause to be paid all and singular the debts and liabilities aforesaid which shall be brought in under these presents and remain outstanding, as hereinbefore provided, and all expenses and liabilities of every kind incurred in the execution of the trusts hereinafter created or declared, and all the notes aforesaid that shall be issued by the trustee aforesaid, together with the interest thereon, according to the tenor thereof, then this deed shall be and become void; otherwise shall remain in force.

And subject to the condition aforesaid, in trust for said party of the second part, and other the trustees or trustee under these presents for the time being, to stand seized and possessed of the said granted estates and premises, and until default shall be made in the performance of the conditions aforesaid or any part thereof, or breach shall be made of any of the covenants or agreements hereinafter contained on the part of said parties of the first part to be kept or performed, or until sale under the trusts hereinafter declared, or until entry under the power in that behalf hereinafter contained, to permit and suffer said parties of the first part to retain the possession and use of said granted premises:

Provided, and it shall be lawful for said trustees or trustee for the time being at any time or from time to time before such default or breach, and with or without previous entry, in their or his
593 discretion, to sell at public or private sale any part or parts of said granted estates and property, and to execute and deliver such deed or deeds as may be necessary or proper to vest in the purchaser or purchasers thereof an absolute and indefeasible estate in fee simple therein, and to stand seized of all the purchase-moneys to

arise and received therefrom for the use and purposes hereinafter declared respecting the same: and

Provided further, That said trustees or trustee for the time being may at any time or from time to time, before default or breach as well as after, enter upon said granted estates and property or any part or parts thereof, and take and assume the full and absolute possession and control of the same, and in their or his discretion to continue to run and operate or to close the mills or print works of said manufacturing company or any or either of them, as said trustees or trustee for the time being shall deem for the best interests of the creditors: and

Provided also, and it is hereby further declared, That in case default shall be made in payment of said notes hereby secured or any or either of them, or of the semi-annual interest due thereon, or breach shall be made of either of the covenants or agreements herein contained on the part of said parties of the first part to be kept and performed, and such default or breach shall continue for the space of sixty days, then in such case the said trustees or trustee hereunder for the time being, in their or his discretion, may and upon the request in writing of the holders of one-fifth in amount of the notes then issued and outstanding under these presents said trustees or trustee for the time being shall from time to time thereafter, either before or after entry as aforesaid, sell, either together or in parcels, the estates and property aforesaid or any part or parts thereof at public or private sale, as said trustees or trustee shall think best, first giving, in case of any auction sale under this or under any other provision of this instrument, notice thereof by advertisement at least twice a week for four successive weeks in some public newspaper printed in said Providence, and such other notice as they or he may deem advisable, and upon sale thereof to execute and deliver such deed or deeds as may be necessary or proper to vest in the purchaser or purchasers thereof an absolute and indefeasible estate in fee simple therein.

594 And it is hereby declared that said trustees or trustee for the time being shall stand seized of all the purchase-moneys to arise and received from sales or otherwise under any of the trusts of these presents, to apply and appropriate the same—

First. To the payment of all expenses incident to such sale or sales, and of all insurance moneys, taxes, and other charges, if any, paid or incurred by them in respect of said trust estates, together with a reasonable compensation to said trustees or trustee for the time being for their or his own services, and reasonable counsel fees and all other charges and liabilities paid or incurred by them, either in carrying on the business or in the execution of any other of the trusts hereby created;

And, secondly, the residue of all moneys received by them under any trusts of this instrument from time to time to apply and appropriate ratably to the payment of the principal and interest of all the debts and liabilities aforesaid of said parties of the first part which shall be brought in under these presents and remain outstanding as aforesaid, and of all the notes that shall be issued by

said trustee and be outstanding under and secured by these presents, and although by their terms the same may not then have matured, accounting to said parties of the first part, respectively, their heirs, executors, administrators, or assigns, for any surplus, if any, that may remain after the full payment thereof.

And it is further declared that no purchaser under any or either of the foregoing trusts shall be under any obligation to inquire into the necessity or regularity of any sale thereunder, nor to see to the application of any of the purchase-moneys thereof, but that the receipt of the trustees or trustee for the time being to such purchaser or purchasers for such purchase-moneys shall be his or their full and effectual acquittance and discharge therefor; and if at any time said trustee, or any trustee to be appointed under these presents, shall be desirous of resigning and of being discharged from the trusts aforesaid, it shall be lawful for him or them so to do, and in such case or in case said trustee or any trustee to be appointed under these presents shall die or become incapable of acting in said trusts, it shall be lawful for the surviving or continuing trustees or
595 trustee for the time being, by any writings or writing under their or his hands, to nominate and appoint, or in case at any time all the trustees for the time being shall resign together, then for the supreme court of the State of Rhode Island, sitting in equity, to appoint any other person or persons to be a trustee or trustees in the stead and place of him or them so dying, resigning, or becoming incapable of acting as aforesaid, and thereupon and as often as any such appointment shall be made all the trust estates and property then held under the trusts aforesaid shall, with all convenient speed, be so conveyed, assigned, and transferred as to vest the same in the surviving or continuing trustees or trustee, and such new trustees or trustee, or if there be no continuing trustee, then in such new trustees or trustee only, their or his heirs, executors, administrators, and assigns, to the same uses and upon the same trusts as are herein declared concerning the same; and every new trustee under these presents so appointed, or otherwise duly appointed by any court of competent jurisdiction, may immediately exercise any power or discretion herein granted in the same manner as though originally named as trustee herein, and although the trust estate be not then vested in him; and no trustee under these presents shall be answerable or accountable for any loss which may happen to said trust estate or property unless the same shall happen by his own neglect or default.

And the said parties of the first part, for themselves and for their respective heirs, executors, administrators, and assigns, do hereby covenant with the said party of the second part, his heirs, executors, administrators, and assigns, at any time or from time to time during the continuance of this security, to execute and deliver to the party of the second part or other the trustees or trustee under these presents for the time being, or to any purchaser under any of the foregoing trusts, such further conveyances or assurances of the estates or property hereby conveyed or intended to be con-
596 veyed or any part or parts thereof as said trustees or trustee

for the time being may reasonably require, and at all times during the continuance of this security, at their own cost and charges, to keep and maintain insurance, for the benefit of said party of the second part under these presents, upon the mills, buildings, machinery, and other insurable property hereby conveyed or intended to be conveyed, in such reasonable amounts and in such insurance companies as said trustees or trustee for the time being shall approve; also that the profits that shall hereafter accrue in the business of said manufacturing company shall from time to time be by said company paid over to said trustees or trustee for the time being, to be held and applied to any of the purposes aforesaid in the same manner as the other trust moneys under these presents; also to pay all taxes and assessments, rates and charges, of every nature that may be laid or levied upon or in respect of said granted premises, and in default thereof it shall be lawful for said trustees or trustee for the time being to effect such insurance and to pay said taxes, assessments, rates, and charges, and all sums paid therefor shall be a further lien upon said granted premises secured by these presents.

In testimony whereof said A. & W. Sprague Manufacturing Company have caused these presents to be signed and its corporate seal to be hereto affixed by said Amasa Sprague, its treasurer, for this purpose fully authorized, and said other parties of the first and second parts have hereunto set their hands and seals this said first day of November, A. D. eighteen hundred and seventy-three.

Signed, sealed, and delivered in presence of—

THE STATE OF RHODE ISLAND, ETC., } *ss:*
City and County of Providence, }

Be it known that in said city of Providence, on this — day of November, A. D. 1873, before me, —— ——, a justice of the peace for the said city of Providence, a notary public for said State of Rhode Island, and a commissioner for the State of New York, residing in said city of Providence, personally appeared Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague, who are personally known to me to be the same persons described in and who signed, sealed, and executed the foregoing instrument, and they then and there severally acknowledged to me that they signed, sealed, executed, and delivered the said instrument as and that the same is their free and voluntary act and deed for the uses and purposes
597 therein mentioned and expressed; and at the same time and place the said Amasa Sprague, also personally known to me to be the same person who executed the foregoing instrument as treasurer, in his capacity as treasurer of the A. & W. Sprague Manufacturing Company, also acknowledged to me that he signed, sealed, executed, and delivered the said instrument as and that the same is his free and voluntary act and deed as such treasurer and the free and voluntary act and deed of the said A. & W. Sprague Manufacturing Company for the uses and purposes therein mentioned and expressed.

In testimony whereof I have hereunto set my hand and official seals, at said city of Providence, on this said — day of November, A. D. 1873.

Office of C. Frank Parkhurst, May 8, 1884, 3.30 p. m.—Adjourned to Saturday, May 10, at 11 a. m., at the same place.

Deposition of Benjamin Macomber.

BENJAMIN MACOMBER, of South Kingston, in the county of Washington and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for for said Zechariah Chafee:

Int. 1. What is your name, age, residence, and occupation?

Ans. Benjamin Macomber; age, fifty-nine years; residence, South Kingston; occupation, farmer and fisherman.

Int. 2. Do you know Francis D. Moulton and William Sprague, parties to this suit; and have you known them since the beginning of the year 1882?

Ans. Yes, sir.

Int. 3. Whether or not you, with your wife and daughter, lived at any time upon the estate known as Canonchet; and, if so, between what dates.

Ans. I did. We moved there Oct. 26, 1881; we left there April 5, 1884; we lived there between those dates.

598 Int. 4. Do you remember the time of the sale of the said estate by Mr. Chafee, in the summer of 1882?

Ans. Yes, sir.

Int. 5. During the time that you have stated you lived on the place did William Sprague and his son, Willie Sprague, live there?

Ans. They lived there the first year a good deal of the time. Willie was there most of the time. Willie boarded with me the most of the time.

Int. 6. Whether or not you saw at any time, either before or after the said sale, the said Francis D. Moulton on the said Canonchet estate; and, if yes, when and how many times. State any conversations between you and the purpose of his visits, if any.

Ans. I think the first time I saw Moulton on the estate was in the fall of 1882. The exact dates I cannot remember. I won't swear how many times I saw him on the estate; two or three times, I should think. There were no conversations between us. He came there with his wife at one time and asked if Governor Sprague was there. I think it was the fall of 1882 that his wife came with him. He wanted to go into the mansion, and I went in with him. That is all there was. I went through the house with him.

Int. 7. Whether or not you have ever seen Governor Sprague and Francis D. Moulton together before the time of the sale, either on the Canonchet estate or elsewhere.

Ans. I cannot say that I ever did. I can't say that I ever came across them anywhere.

Int. 8. Do you know whether or not there were upon said estate just prior to, at the time of, and subsequent to said sale any men who were not formerly employed there? If there were, state how many, how long they were there, and what they were there for.

Ans. Yes, sir; there was men there. I will not state positively whether they came there the day before the sale or not. There were men there at the time of the sale who did not belong on the place. There were four men there; there may have been more. I could not state the exact time they were there; from a week to ten days, probably. I couldn't tell you what they were there for. I spoke with the men.

599 Int. 9. What did they seem to be doing?

Ans. They seemed to be there round the mansion. They were not round the mansion all the time. They would be down to the bridge. They was down to the bridge, and seemed to be standing round the gate.

Int. 10. Were there any fire-arms on the place; and, if so, where?

Ans. There were fire-arms there. They were in the mansion when I saw them first.

Int. 11. Where did you see them afterwards? When, if you know, were they brought there and what was afterwards done with them?

Ans. They were in the mansion, and I don't know about the carrying of them away. I suppose I saw my daughter have one of them. I don't know when they were brought there. I don't know what was done with them.

Int. 12. Had you ever seen these fire-arms until shortly before the sale, and in what part of the mansion house did you see them?

Ans. I couldn't state how long before the sale I saw the muskets there. They were in the dining-room, I think.

(Messrs. Abraham Payne and A. B. Patton, Esqrs., present, and asked no questions.)

BENJ. MACOMBER.

Subscribed by said Benjamin Macomber in my presence this tenth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

Deposition of Penelope C. Macomber.

PENELOPE C. MACOMBER, of South Kingston, in the county of Washington, in the State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows to questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. What is your name and residence?

600 Ans. Penelope C. Macomber; residence, South Kingston; wife of Benjamin Macomber, the last witness.

Int. 2. Do you know Francis D. Moulton and William Sprague, and have you known them since the beginning of the year 1882?

Ans. Yes, sir.

Int. 3. Do you remember the sale of the Canonchet estate, in the summer of 1882?

Ans. Yes, sir.

Int. 4. Whether or not you saw at any time, either before or after the said sale, said Francis D. Moulton on the said Canonchet estate; and, if yes, when and how many times. State any conversation between you, and the purpose of his visits, if you know.

Ans. Yes, sir; I saw him there; I don't recollect how many times nor when. There were no conversations; he merely asked if the Governor was in. I do not know the purpose of his visits.

Int. 5. Do you know whether these visits were before or after said sale?

Ans. I don't remember.

PENELOPE C. MACOMBER.

Subscribed by said Penelope C. Macomber in my presence this tenth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

Deposition of Jennie Macomber.

JENNIE MACOMBER, of South Kingston, in the county of Washington and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. What is your name and residence?

Ans. Jennie Macomber; residence, Narragansett Pier, South Kingston, and am the daughter of Benjamin Macomber.

Int. 2. Were you living on the Canonchet estate with your parents during the time they lived there, and do you remember the auction sale of the said estate in the summer of 1882?

601 Ans. Yes, sir.

Int. 3. Did you during that time and at and subsequent to the time of said sale perform any services in the mansion house? And, if so, state what they were.

(A. B. Patton, of counsel for said William Sprague, objects to this question as immaterial.)

Ans. Yes, sir; I did services there; I used to do the work there—to take care of the rooms.

Int. 4. Did William Sprague occupy a sleeping-room there; and, if so, did you have the charge of that room?

Ans. Yes, sir; he did; and I had charge of that room.

Int. 5. Did William Sprague at any time make any inquiry of

you in respect to a letter from Francis D. Moulton? State fully all the circumstances.

(Abraham Payne, on behalf of complainant, objects to this as immaterial.

A. B. Patton makes same objection.)

Ans. Yes, sir; he asked me at one time about a letter from Francis D. Moulton. I don't know what was in the letter; he never told me.

Int. 6. When was this?

Ans. I'm sure I don't remember when it was.

Int. 7. Did he seem to be particularly anxious or angry about it? State what he said—the substance of it.

(A. Payne makes same objection as to the question numbered 5.)

Ans. He was anxious to know if I had found one. He did not seem to be angry at all. He never said anything at all about the letter, only just that. He found it afterwards.

Int. 8. Please state as nearly as you can the time of this occurrence, with reference to the sale of the estate referred to.

Ans. I don't know when it was; I don't remember whether it was before or after the sale.

JENNIE MACOMBER.

Subscribed by said Jennie Macomber in my presence this tenth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

602 *Deposition of Rowland R. Robinson.*

ROWLAND R. ROBINSON, of South Kingston, in the county of Washington and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. What is your name, age, residence, and occupation?

Ans. Rowland R. Robinson; age, twenty-one years; residence, Wakefield, R. I.; occupation, student at Harvard College.

Int. 2. Do you know Francis D. Moulton, the complainant in this case, and where does he reside in the summer?

Ans. I know him, and he resides at Wakefield, R. I.

Int. 3. Whether or not you have been acquainted with Mr. Moulton since early in the year 1882, and whether you have been in the habit of visiting frequently at his house in Wakefield; and, if so, whether or not you frequently visited there in the summer of 1882.

Ans. I knew Mr. Moulton before that time, and I visited at his house during that year.

Int. 4. Whether or not you ever saw Gen. Benjamin F. Butler and William Sprague at the house of Francis D. Moulton in Wakefield?

(Abraham Payne objects to this question as immaterial. A. B. Patton makes same objection.)

Ans. I have.

ROWLAND R. ROBINSON.

Subscribed by said Rowland R. Robinson in my presence this tenth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

603 *Deposition of James G. Burns.*

JAMES G. BURNS, of South Kingston, in the county of Washington and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by C. FRANK PARKHURST, of counsel for said Zechariah Chafee:

Int. 1. What is your name, age, residence, and occupation?

Ans. James G. Burns; Narragansett Pier, R. I.; forty-three years old; occupation, proprietor of McSparron Hotel.

Int. 2. Do you know William Sprague and Francis D. Moulton, parties to this suit, and how long have you known them?

Ans. I do. I have known Francis D. Moulton, I should judge, seven years. I have known William Sprague about the same time.

Int. 3. How long have you lived at Narragansett Pier?

Ans. Eleven years to-day.

Int. 4. Do you remember the auction sale of the Canonchet estate in the summer of 1882?

Ans. Yes, sir.

Int. 5. Whether or not at the time of or prior to said sale you had seen the said Francis D. Moulton and William Sprague together; and, if so, state when and where and how often.

(A. Payne and A. B. Patton object to this question as immaterial.)

Ans. I have no recollection now of ever seeing them together.

Int. 6. Has Francis D. Moulton ever been in your hotel—the McSparron House? If so, state when and for what purpose?

(Messrs. Payne and Patton object on same grounds as before.)

Ans. Francis Moulton was in my house last fall for the purpose of telephoning.

Int. 7. Had you a telephone at that time connecting with the city of Providence?

(A. B. Patton objects to the question as immaterial.)

Ans. Yes, sir.

604 Int. 8. To whom was Mr. Moulton telephoning at that time, and in regard to what?

(A. B. Patton objects as immaterial.)

Ans. He was telephoning to William Sprague, and from Mr. Moulton's conversation I judged it was to meet Mr. Sprague.

Int. 9. State the substance of the conversation on the part of Mr. Moulton, and to what it referred.

(A. B. Patton objects to this question as immaterial and irrelevant.)

Ans. I can't state the conversation. It referred to a meeting with Mr. Sprague.

Int. 10. Meeting with him where?

(A. B. Patton objects as immaterial.)

Ans. I don't remember.

Int. 11. Whether or not you gathered from the conversation referred to whether Mr. Moulton was in friendly relations with Mr. Sprague and was acting in the interest of William Sprague.

(A. B. Patton objects to this as irrelevant and immaterial.)

Ans. The inference that I drew at the time was that he was friendly to Mr. Sprague and was acting in the interest of Mr. Sprague at that time.

(Abraham Payne, on behalf of the complainant Moulton, objects to this answer as being the inference of the witness and not of any fact, and as incompetent for that reason.)

JAMES G. BURNS.

Subscribed by said James G. Burns in my presence this tenth day of May, A. D. 1884.

I. H. SOUTHWICK, Jr., *Examiner.*

Deposition of Benjamin F. Thurston.

Benjamin F. Thurston, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said Zechariah Chafee, one of the respondents in said suit, doth depose and say as follows:

605 To questions proposed by C. Frank Parkhurst, of counsel for said Zechariah Chafee:

Int. 1. What is your name, age, residence, and occupation?

Ans. Benjamin F. Thurston; age, fifty-four; residence, Providence; profession, attorney and counsellor at law.

Int. 2. Are you one of the counsel who engaged with Mr. Hart and Mr. Tillinghast in the preparation of the trust mortgage deed spoken of by Mr. Hart in his deposition?

Ans. I am.

Int. 3. Have you read the deposition given by Mr. Hart in this case? And, if so, state whether you are cognizant of the facts and circumstances therein stated by him in regard to the preparation, execution, and delivery of said trust mortgage and assignments, and whether you agree with him in his statement of those facts and circumstances substantially.

(In behalf of Mr. Moulton, Abraham Payne, Esq., waives all objection to the form of this question if the information called for by it is competent or relevant to the issue in this case, but objects to the question on the ground that the information called for is incompetent and irrelevant to the issues in this case.

A. B. Patton makes the same waiver and objection on the part of William Sprague, one of the respondents.)

Ans. I have read the deposition of Mr. Hart in this case, and his statement of the facts and circumstances attending the preparation of the form of the so-called trust deed and also the circumstances connected with the execution of the deed and the delivery of the same to Mr. Chafee accord substantially with my own recollection. There is nothing that occurs to me at this moment that I desire to add to the statement made by him.

Cross-examination by ABRAHAM PAYNE, on behalf of complainant:

X Int. 1. Have you any recollection that Mr. Abraham Payne acted as counsel for the committee of creditors or for any person during the consultations in the preparation of the deed of trust prior to the time when its form was settled and determined?

Ans. I do not recollect that Mr. Payne participated in any
606 such consultations. I remember him only, in any professional relation with the events of that period, in connection with a visit on Sunday evening at the Sprague mansion, when the subject of the acceptance by the trustees, Lockwood, Nightingale, and Waterman, of the trust was under consideration by them. I do not recall any occasion prior to that time when I met him in consultation upon the business of the Sprague failure; nor is there any circumstance which up to this time refreshes my mind as to his being present in the upstairs office of the Spragues. What his relations were in fact to any parties who were named as trustees or were creditors of the estate I do not know.

Cross-examination by ANDREW D. PATTON, on behalf of William Sprague, one of the defendants:

X Int. 1. Was you present at the house of Mrs. Fanny Sprague on the evening of Nov. 28, 1873?

Ans. I was not.

X Int. 2. Was you present at the meeting of the stockholders of the A. & W. Sprague Manufacturing Company held on the twenty-eighth day of November, 1873?

Ans. I have no distinct recollection of the meeting of the stock-

holders to which you refer; but I will say that from the time when the Sprague embarrassment was first made public down to the time when Mr. Chafee entered upon the discharge of his trust I spent all my time practically at the Sprague offices.

X Int. 3. Was you present at the stockholders' meeting on the evening of Dec. 1, 1873? If so, state when and where the meeting was held.

Ans. I have no distinct recollection upon the subject.

X Int. 4. Was you present at the house of Mrs. Fanny Sprague on the evening of Dec. 4, 1873? If so, state how long you was present that evening.

Ans. I was present on the evening of Dec. 1, 1873. I reached the house, as near as I can now recall, between seven and eight o'clock, and remained there until the business of the evening had been completed and the trust deed delivered. I remained very probably a half hour or so afterward, and reached my house not far from midnight; whether before or after midnight I cannot say.

607 X Int. 5. Did you take part in making the erasures and alterations which now appear upon the face of the so-called Sprague mortgage deeds?

Ans. There were a number of copies of the trust deed which were required to be executed. I did take part in making the alterations referred to in the question.

X Int. 6. Did the deeds bear the signatures of the grantors prior to making these alterations?

Ans. I can only positively testify on that subject with respect to the signature of William Sprague. His name, I know, was on some of the copies of the trust deed that were executed. I will not say that his name was upon all from any recollection of my own. It is not impossible that the names of some of the other grantors were also upon the copies of the deed, but I do not recollect.

X Int. 7. Did the names of George Harris, Thomas A. Doyle, and F. W. Latham appear upon the deeds prior to the making of these erasures?

Ans. Not that I recollect.

X Int. 8. State whether or not the deeds bore the signature of Henry Martin, a commissioner qualified to take the acknowledgment of deeds, purporting that the deeds had been acknowledged before him prior to these erasures.

Ans. Not so far as I know or believe. Mr. Henry Martin was specially sent for to take the acknowledgments of the grantors on the night in question, and he came to the house, and in the presence of all of us performed his office as a magistrate.

X Int. 9. State whether or not you saw any of the parties, grantors, on the evening of Dec. 1, 1873, sign the deeds spoken of and acknowledge the same before Henry Martin; if so, who?

Ans. All the parties to the deed, with the exception of William Sprague, acknowledged and delivered the deed on the evening of Dec. 1. I do not recall any circumstance in connection with any one of them taking up a pen and affixing his or her signature. I know that after the deeds were completed in form the grantors were

assembled in the dining-room, where the work had been done. I remember well the scene which occurred when Mr. Martin appeared for the purpose of taking the acknowledgments and
608 taking the same, and the congratulations which followed from the grantors there present at the completion of the act.

X Int. 10. At what time of the evening was this?

Ans. It was between eleven and twelve o'clock. I remember this from the circumstance that I directed attention to the time as shown by our time-pieces in order that there should be no question as to the day of the month.

X Int. 11. What was then done with the deeds?

Ans. To the best of my recollection arrangements were made before we separated for placing the deeds on record, and Mr. Harris was charged with a part of this duty.

X Int. 12. Were the erasures in the deeds made before or after the arrival of Mr. Chafee at the house of Mrs. Sprague?

Ans. My recollection is that Mr. Chafee arrived at the house while the work was in progress of altering the deeds, and it continued, according to my recollection, after his arrival. I would say, however, that as to the minor details of what occurred I did not charge my recollection. My mind was engrossed with the business of securing a proper execution of the deeds to a trustee under the same.

BENJ. F. THURSTON.

Subscribed by said Benjamin F. Thurston in my presence this tenth day of May, A. D. 1884.

I. H. SOUTHWICK, Jr., *Examiner.*

The foregoing cross-examinations of Benjamin F. Thurston are subject to all objections in favor of said respondent, Zechariah Chafee, as if specifically noted.

I. H. SOUTHWICK, Jr., *Examiner.*

It is agreed that Thomas C. Greene, receiver, shall have the right, within the time limited by the court for the taking of testimony, to cross-examine any the aforenamed deponents examined on the sixth, eighth, and tenth days of May, A. D. 1884.

I. H. SOUTHWICK, Jr., *Examiner.*

609 Office of C. Frank Parkhurst, May 15, 1884, 2.30 p. m.—Adjourned.

I. H. SOUTHWICK, Jr., *Examiner.*

Circuit Court of the United States, Rhode Island District.

I, Isaac H. Southwick, Jr., the examiner named in the commission hereunto attached, hereby certify that the aforenamed Charles Blake, Clarence H. Guild, Charles Hart, and James Tillinghast personally appeared before me on the sixth day of May, A. D. 1884, between the hours of ten o'clock in the forenoon and half past four o'clock in the afternoon, at the office of C. Frank Parkhurst, Esq., No. 37 Weybosset street (Reynold's building), room 22, in the city of

Providence, in said district; that the aforenamed Henry V. A. Joslin, Henry R. Davis, Henry Pitman, Rufus Waterman, and Henry Howard personally appeared before me on the eighth day of May, A. D. 1884, between the hours of ten o'clock in the forenoon and half past two o'clock in the afternoon, at said office of C. Frank Parkhurst, Esq., and that the aforenamed Benjamin Macomber, Penelope C. Macomber, Jennie Macomber, Rowland R. Robinson, James G. Burns, and Benjamin F. Thurston personally appeared before me on the tenth day of May, A. D. 1884, between the hours of eleven o'clock in the forenoon and half past two o'clock in the afternoon, at said office of C. Frank Parkhurst, Esq.; that then and there respectively, as aforesaid, the said Charles Blake, Clarence H. Guild, Charles Hart, James Tillinghast, Henry V. A. Joslin, Henry R. Davis, Henry Pitman, Rufus Waterman, Henry Howard, Benjamin Macomber, Penelope C. Macomber, Jennie Macomber, Rowland R. Robinson, James G. Burns, and Benjamin F. Thurston, after being sworn to testify the truth, the whole truth, and nothing but the truth, did each severally and respectively give his foregoing deposition; that said depositions were severally reduced to writing by me in the presence of each of said deponents respectively, and that each of said deponents signed his respective deposition in my presence and in the presence of such of the parties or counsel as attended.

610 I further certify that the exhibits, Y, Z, annexed to the foregoing deposition of said Charles Blake; AA, annexed to the foregoing deposition of said Henry R. Davis; BB, CC, DD, EE, FF, GG, annexed to the foregoing deposition of said Henry Pitman; HH, annexed to the foregoing deposition of said Rufus Waterman, and all authenticated by my signature, are true copies of the documents or the documents themselves referred to in said depositions respectively, and that said exhibits were hereunto attached by me.

I further certify that the foregoing stipulation, No. 1, was entered into by the counsel, subscribers thereto, on behalf of their respective parties in my presence the eighth day of May, A. D. 1884, and that the deposition of William J. King, taken in the suit in equity, "Zechariah Chafee against The Fourth National Bank *et al.*," hereinbefore appearing as Exhibit II, is the deposition referred to in said Stipulation No. 1, and that said Stipulation No. 1 and Exhibit II were hereunto attached by me.

I further certify that the foregoing depositions of said Blake, Guild, Hart, Tillinghast, Joslin, Davis, Pitman, Waterman, Howard, Benjamin Macomber, Penelope C. Macomber, Jennie Macomber, Robinson, Burns, Thurston, and King were taken at the request of said Zechariah Chafee, to be used in his behalf at the hearing of a suit in equity now pending in said circuit court, wherein Francis D. Moulton is complainant and Zechariah Chafee and others are respondents, and that the counsel of said Chafee notified the counsel of record of the other parties to said suit of the time and place of taking said depositions, as appears by the notification and indorsements of counsel thereon, hereunto attached.

I further certify that I am not of counsel nor the solicitor of any

party to said suit, and that I am not interested in any way whatsoever in the event of said suit.

ISAAC H. SOUTHWICK, JR., *Examiner.*

Deposition of Abraham Payne.

ABRAHAM PAYNE, of Providence, in the county of Provinence and State of Rhode Island, being sworn to testify the truth,
611 the whole truth, and nothing but the truth, and examined on the part of the said William Sprague, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by ANDREW B. PATTON, Esq., of counsel for said William Sprague:

Int. 1. What is your name, age, residence, and occupation?

Ans. Abraham Payne; age, sixty-five years; residence, Providence, R. I.; attorney and counsellor at law.

Int. 2. State whether or not in the fall of 1873 you was retained by any person or persons to advise with reference to the Sprague trust mortgage deed; if so, by whom; for what purpose. State generally your connection with the matter.

Ans. I was not retained by the committee of creditors or by any person, nor was I consulted as to the preparation of the deed. After the deed had been prepared and agreed to by the grantors and the committee of creditors, and, to the best of my recollection, after it had been signed and acknowledged by the grantors, I was consulted by the proposed trustees as to whether they could accept the deed and execute the trusts without risk of personal liability, and I advised them that they could not. This was my whole connection with the matter.

Int. 3. State whether or not you was present with the proposed trustees and others at the house of Mrs. Fanny Sprague, in the city of Providence, after you was retained in the matter; if so, state when the meeting was, who was present, and the result of the meeting.

Ans. Sunday afternoon, Nov. 30, 1873, by request of Rufus Waterman, one of the proposed trustees, I went to the house of Mrs. Fanny Sprague and met there Rufus Waterman. Whether either of the other proposed trustees were present I do not positively recollect. Charles Hart was present as counsel for the Spragues, and I think Benjamin F. Thurston, James Tillinghast, and John A. Gardner, also of counsel for the Spragues, were present. Mr. Amasa Sprague was present. There may have been others, but I do not positively recollect that any other person was present. The object of the meeting was to see if the objections of the trustees to the acceptance
612 of the deed by them could be overcome. There was no definite result. After much discussion the meeting broke up.

Int. 4. State whether or not you was present the next day at a meeting between the counsel of the Spragues and the proposed trustees at the office of Thomas C. Greene, Esq.; if so, state who was present, the purpose of the meeting, and the result of the same.

Ans. I was present in the early evening of Dec. 1, 1873, at the office of Thomas C. Greene, by request of the proposed trustees. I think all the proposed trustees were present, but I am not positive about the presence of any one of them except Mr. Waterman. Mr. Thomas C. Greene was present with me as counsel for the trustees. Charles Hart was present, and I think also Mr. Thurston, Mr. Gardner, and Mr. Tillinghast. Mr. William J. King was present, and I think other creditors of the Spragues, whose names I do not recollect. The specific object of this meeting, as I remember, was to ascertain if the creditors would indemnify the trustees against the risk of personal liability in case of their acceptance of the deed. It was definitely announced that no such indemnity could be given. After a short private conference between Mr. Greene, the trustees who were present, and myself it was proposed to the counsel of the Spragues that Messrs. Greene and I, with the trustees, should go to Boston the next morning to consult Benjamin F. Thomas and Henry W. Paine, with the view to see whether the objection of the proposed trustees to the acceptance by them of the deed could be overcome, and that we should telegraph the result from Boston. This proposition was assented to, and the meeting broke up, and on my way to the cars next morning Mr. Greene met me and notified me that he had received notice from Mr. Thurston that the deed had been executed to Mr. Chafee. This ended my connection with the trust deed until some years after, when I was employed by a committee of creditors to file a bill in equity for the removal of Mr. Chafee from his office of trustee.

(The above deposition is taken subject to all objections as if specifically noted.)

ABRAHAM PAYNE.

613 Subscribed by said Abraham Payne in my presence this eighth day of May A. D., 1884.

I. H. SOUTHWICK, JR., *Examiner.*

Office of C. Frank Parkhurst, May 8, 1884, 3.30 p. m.—Adjourned to Saturday, May 10, 1884, at 11 a. m., at the same place. See same record at p. 334, *ante.*

Depositions of witnesses produced, sworn, and examined the fourteenth day of May, A. D. 1884, at Providence, R. I., under and by virtue of a commission, hereunto attached, issued out of the circuit court of the United States within and for the Rhode Island district, in a suit in equity now pending in said court, wherein Francis D. Moulton is complainant and Zechariah Chafee and others are respondents, as follows:

Deposition of Henry Pitman.

HENRY PITMAN, of Providence, in the county of Providence and State of Rhode Island, being sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of Wil-

liam Sprague, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by ANDREW B. PATTON, of counsel for said William Sprague:

Int. 1. What is your name, residence, and occupation?

Ans. Henry Pitman; Providence, R. I.; clerk of the United States circuit court.

Int. 2. Have you in your custody as clerk of said court original papers in suit at law, National Bank of Commerce of New York *v.* A. & W. Sprague Manufacturing Company, entered at the June term of said court, 1876; if so, will you produce them?

Ans. I have, and now produce them.

Int. 3. Please annex to this deposition a certified copy of the original writ and of that part of the officer's return of service on said writ which was made upon the property of the A. & W. Sprague Manufacturing Company in the town of South Kingston, including the estate in controversy; also certified copy of the com-
614 mencement and first count and conclusion of the plaintiff's declaration; certified copies of all subsequent pleadings, including the joinder of issue; certified copy of the agreement and judgment; also certified copy of the execution which issued in said case, and also that part of the officer's return of service on said execution which was made upon all the real property of the A. & W. Sprague Manufacturing Company in the town of South Kingston, including the estate in controversy, and make the same a part of this deposition.

Ans. I do annex the papers called for and make the same a part of this deposition.

(The papers referred to are hereto annexed as Exhibits JJ, KK.—I. H. Southwick, Jr., examiner.)

Int. 4. Have you also in your custody as clerk of said court original papers in suit at law, Evan Randolph *v.* William Sprague *et als.*, No. 885, entered at the November term of said court, 1875? If so, will you produce them?

Ans. I have, and now produce them.

Int. 5. Please annex to this deposition certified copies of original writ in said cause; also copy of the writ of mesne process issued in said cause, and that part of the officer's return of service of said writ of mesne process which was made upon the property of William Sprague and Amasa Sprague in the town of South Kingston, including the estate in controversy; also copy of the commencement, first count, and conclusion of the plaintiff's declaration; copies of all subsequent pleadings, including the joinder of issue; copy of the agreement and judgment; copy of the execution and of that part of the officer's return of service which was made upon the property or the right, title, and interest of William and Amasa Sprague in the town of South Kingston, including the estate in controversy in this suit, and make the same a part of this deposition.

Ans. I do annex the papers called for and make them part of this deposition.

(The papers referred to are hereto annexed as Exhibit LL.—I. H. Southwick, Jr., examiner.)

615 Int. 6. Will you produce the original papers in the suits referred to in this deposition on the hearing of this cause, to be used, if necessary, in the said hearing?

Ans. I will.

HENRY PITMAN.

Subscribed by said Henry Pitman in my presence this fourteenth day of May, A. D. 1884.

I. H. SOUTHWICK, JR., *Examiner.*

EXHIBIT JJ.

Referred to by said Henry Pitman in his foregoing deposition and by him furnished to me to be made a part thereof.

Attest: I. H. Southwick, Jr., examiner.

Circuit Court of the United States, District of Rhode Island, *sc:*

THE NATIONAL BANK OF COMMERCE, IN NEW YORK,
vs.
THE A. & W. SPRAGUE MANUFACTURING COMPANY.

Writ.

[L. S.] The President of the United States of America to the marshal of said district or to his deputy, Greeting:

We command you to attach the goods and chattels and real estate of the A. & W. Sprague Manufacturing Company, a manufacturing corporation, created by the General Assembly of the State of
616 Rhode Island, having a place of business in the city of Providence, in said State and district, a citizen of the State of Rhode Island, and them in safe custody keep, and also to attach the personal estate of the said A. & W. Sprague Manufacturing Company, a corporation as aforesaid, in the hands or possession of Zechariah Chafee, of said city of Providence, as trustee of the said A. & W. Sprague Manufacturing Company, a corporation as aforesaid, and also to attach their stock or shares in any banking association or incorporated company to the value of one hundred and twenty thousand dollars, and also to summon said A. & W. Sprague Manufacturing Company to answer the complaint of the National Bank of Commerce, a corporation existing under the laws of the United States and located in the city, county, and State of New York, at the next term of the circuit court to be holden at Providence, within and for the district of Rhode Island, on the fifteenth day of June next ensuing the date hereof, in an action of the case, for that the defendant corporation has broken its promises to the plaintiff corporation made, as by declaration to be filed in court will be fully set forth, to the damage of the plaintiff corporation one hundred and

twenty thousand dollars. Hereof fail not and make true return of this writ with your doings thereon.

Witness Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-first day of December, in the year 1875.

HENRY PITMAN, *Clerk.*

I, William W. Douglas, attorney for and in behalf of the plaintiff corporation named in the within writ, make affidavit and say that said plaintiff corporation has a just claim and demand against the defendant corporation named in said writ that is due, upon which said plaintiff expects to recover in said action, and has a reasonable expectation of recovery of a sum sufficient to give jurisdiction to the court to which said writ is returnable and is made returnable, to wit, the circuit court of the United States for the district of Rhode Island, and that, to the best knowledge and belief of this
617 affiant, the sum of seventy-four thousand dollars and upwards is justly due from the defendant corporation to the plaintiff corporation in the action commenced by said writ; that the defendant corporation has property which it does not intend to apply to the payment of said claim; that the defendant corporation has committed fraud in the concealment of its property or in the disposition thereof; that since the contracting of said debt the defendant corporation has been the owner of property or in the receipt of an income which it has refused or neglected to apply towards the payment thereof, though requested by the plaintiff so to do.

WM. W. DOUGLAS.

Subscribed and sworn to in Providence, in the county of Providence, this twenty-first day of December, A. D. 1875.

Before me—

HENRY PITMAN,
Clerk U. S. Circuit Court, ex Officio U. S. Commissioner.

Mr. Officer, make service of the within writ by leaving an attested copy of the same (and of this order) with Zechariah Chafee, of the city of Providence, in the State of Rhode Island, for the purpose of attaching all the personal estate of the A. & W. Sprague Manufacturing Company, the defendant corporation within named, lodged or lying in the hands of said Zechariah Chafee, as the attorney, agent, factor, trustee, or debtor of said defendant corporation, and also with Amasa Sprague, treasurer of said corporation, for the purpose of notifying said defendant corporation of the pendency of said action.

WM. W. DOUGLAS,
Plaintiff's Attorney.

Providence, December 21, 1875.

618 *Marshal's Return.*

DISTRICT OF RHODE ISLAND, *sc:*

PROVIDENCE, *December*, 1875.

On the twenty-first day of December, A. D. 1875, at eleven o'clock

and fifty-five minutes in the forenoon, I served this writ and attached all the right, title, and interest of the A. & W. Sprague Manufacturing Company in and to the following-described real estate, to wit:

I also, on the twenty-first day of December, A. D. 1875, at eleven o'clock and fifty-five minutes in the forenoon, attached all the right, title, and interest of the A. & W. Sprague Manufacturing Company in and to the following-described real estate situated in the town of South Kingston, to wit, the estate belonging to said A. & W. Sprague Manufacturing Company, situated northerly of Narragansett Pier, in the town of South Kingston, being the estate now or recently occupied as the residence of William Sprague and family, comprising mansion house, stables, outhouses, farms, garden, and other grounds, with the appurtenances, and have left a true and attested copy of this writ, together with my doings thereon, with the town clerk of the town of South Kingston.

I have also left true and attested copies of this writ, with a general reference thereon to the real estate attached thereby, together with a statement of the date and time of day of such attachment, with Amasa Sprague, treasurer of said defendant corporation, and also with Zechariah Chafee, as the person in possession.

I also, on the twenty-first day of December, A. D. 1875, summoned the said defendant corporation by leaving with Amasa Sprague, treasurer thereof, at the office of said corporation, in the city of Providence, a true and attested copy of this writ.

I also, on the twenty-first day of December, A. D. 1875, at four o'clock and twenty minutes in the afternoon, attached all the personal estate of the said A. & W. Sprague Manufacturing Company in the hands or possession of Z. Chafee, as trustee of defendant corporation, by leaving in his hands, at the office of said company, in the city of Providence, a true and attested copy of this writ;
619 have endorsed thereon the date and time of day of such service, and have paid him his lawful fees, to wit, the sum of two dollars and ten cents.

I have also left a true and attested copy of this writ, so endorsed, with Amasa Sprague, treasurer of said defendant corporation, at their office, in the city of Providence.

JAMES H. COGGESHALL,
U. S. Marshal.

Services	$32 00
Copies and description and travel	44 70
Cash paid to Chafee and town clerks	3 50
	$80 20

Declaration. (*Filed May* 10, 1876.)

DISTRICT OF RHODE ISLAND, *sc:*

Circuit Court of the United States. June Term, A. D. 1876.

The National Bank of Commerce, in New York, a corporation ex-

isting under the laws of the United States and located in the city, county, and State of New York, a citizen of the State of New York, complains of the A. & W. Sprague Manufacturing Company, a manufacturing corporation created by the General Assembly of the State of Rhode Island, having a place of business in the city of Providence, in said State and district, a citizen of the State and district of Rhode Island, attached and summoned by the marshal in an action of the case, for that the defendant corporation, at said Providence, on the twenty-eighth day of July, A. D. 1873, by its promissory note in writing of that date, by its treasurer signed on behalf of said corporation, for value received, promised to pay to the order of the Atlantic DeLaine Company, a similar manufacturing corporation, the sum of twelve thousand six hundred seventy-two thirteen one-hundredths dollars ($12,672.13), at Globe National Bank,
620 three months after date, and the said Atlantic DeLaine Company, by its treasurer, thereafterwards, on the same day, indorsed and delivered the said note to Hoyt, Spragues & Company, and the said Hoyt, Spragues & Company thereafterwards, on the same day, indorsed and delivered the said note to the plaintiff corporation, by reason and in consideration whereof the said defendant corporation became liable and promised the plaintiff corporation to pay it the contents of said note according to the tenor thereof, and the plaintiff corporation avers that said three months have long since elapsed.

Yet, though requested, the defendants have not paid said sum or any part thereof, but ever have refused and do refuse to pay the same.

To the plaintiffs' damage one hundred and twenty thousand dollars, as laid in their writ, dated the twenty-first day of December, 1875.

Wherefore they sue by their attorney.

WM. W. DOUGLAS.

Affidavit of Z. Chafee. (*Filed June 9th*, 1876.)

I, Zechariah Chafee, under oath do state that at the time the writ in the above-entitled cause was served I had none of the estate of said defendant corporation, either directly or indirectly, in my hands or possession.

ZECHARIAH CHAFEE.

Subscrib. and sworn to at Providence on this second day of June, A. D. 1876.

Before me—

HENRY MARSH, JR.,
Notary Public.

Pleas. (*Filed June 9th*, 1876.)

And the said defendant comes and defends, &c., when, &c., and prays judgment of the plaintiffs' writ in said case because it
621 says that prior to the suing out said writ and prior to the pretended service thereof the said plaintiffs had sued out of

the clerk's office of this court their certain other writ against the said defendant, and had declared thereon in this court against it in an action on the case and for the same causes of action in the said declaration in this present suit mentioned, as by the files and record thereof in this court remaining appears, and that the parties in this and the said former suit are the same and not other or different parties, and that the said former suit so brought and prosecuted against the defendant by the said plaintiff as aforesaid was still depending in this court at the time of the suing out and the service of the writ in this the above-entitled cause; all which the said defendant is ready to verify. Wherefore the defendant prays judgment if it ought to be held to make answer to the said writ in this suit, and that the same may abate, and that the defendant may be allowed its costs.

A. & W. SPRAGUE M'F'G CO.,
[L. S.] By AMASA SPRAGUE, *Tr.*

By its attorneys, B. F. THURSTON,
CHARLES HART,
JAMES TILLINGHAST,
J. A. GARDNER.

STATE OF RHODE ISLAND, &c., } *sc:*
Rhode Island District, }

PROVIDENCE, *sc:*

In the city of Providence, on this ninth day of June, A. D. 1876, personally came Amasa Sprague, treasurer of the A. & W. Sprague Manufacturing Company, and made oath to the truth of the facts in the above plea contained.

Before me—

JOHN L. NOYES,
Notary Public.

622 And saving the benefit of the above plea in abatement and in case the same should be overruled for further plea—

The said defendant comes and defends, &c., when, &c.. and says it never promised in manner and form as the plaintiff hath thereof declared against it; and of this puts itself upon the country.

By its attorneys, B. F. THURSTON,
CHARLES HART,
JAMES TILLINGHAST,
J. A. GARDNER.

Replication. (*Filed June 22d,* 1876.)

And the said plaintiff, for replication to the said defendant's said plea by it first above pleaded in abatement, says that for anything in said defendant's said plea alleged and contained the plaintiff's said writ in this present cause ought not to abate, because the plaintiff says that, at the time of the service of the plaintiff's said writ in

this present cause and at the time of the commencement of this present action, there was not then depending in this court a former action brought by this plaintiff against this defendant for the same causes of action in the said declaration in this present suit mentioned, in manner and form as the said defendant has by its said plea alleged, without this, that there is now remaining in this court any such record of such action then and there depending.

And this the plaintiff prays may be inquired of by the court.

By its attorney, WM. W. DOUGLAS.

And the said plaintiff, for further replication to the defendant's said plea by it first above pleaded in abatement, says that for anything by said defendant in said plea alleged the plaintiff's writ in this present action ought not to abate, because the plaintiff says that said former writ in said defendant's said plea mentioned was
623 sued out of the clerk's office of this court and served, if ever lawfully served, upon the twenty-fourth day of October, 1874, and said former declaration was filed, if ever lawfully filed, on the fourth day of November, 1874, and that the promises and undertakings alleged and set forth in the declaration in said former action were made by a citizen of this State and district of Rhode Island to other citizens of Rhode Island, and came by assignment to the plaintiff in said former action; wherefore this court had no jurisdiction to hear and determine the said former action, as by the record of the pleadings and judgment therein now remaining in this honorable court fully appears.

And this the plaintiff is ready to verify. Wherefore it prays judgment, &c.

By its attorney, WM. W. DOUGLAS.

And the said plaintiff, as to the said plea of the said defendant by it secondly above pleaded, and wherein said defendant puts itself upon the country, doeth the like.

By its attorney, WM. W. DOUGLAS.

Rejoinder to First Replication to First Plea. (*Filed October 2d*, 1876.)

And the said defendant, for rejoinder to the plaintiff's first replication to the defendant's first plea, says that there is a record of the writ and declaration in the plea aforesaid of said defendant above specified in the said circuit court of record filed, as the said defendant above in pleading hath alleged, as appears upon the files of said court of record filed; and this the defendant is ready to verify by that record, and prays that the records of said term of this court here may be seen and inspected, &c.

By BENJ. F. THURSTON,
CHARLES HART,
JAMES TILLINGHAST,
JOHN A. GARDNER,
Attorneys for Defendant.

624 *Demurrer to Second Replication to Plea in Abatement.* (*Filed October 2d*, 1876.)

And the said defendant saith that the said second replication by the plaintiff in manner and form aforesaid above pleaded in reply to defendant's plea in abatement, and the matters in the same contained, are not sufficient in law to compel the defendant to answer to the said writ of the plaintiff, to which the said defendant hath no necessity, neither is he bound by the law of the land in any manner to answer; and this the defendant is ready to verify. Wherefore, for want of a sufficient replication in this behalf, the said defendant, as before, prays judgment of the writ aforesaid, and that the said writ may be quashed, &c.

By BENJ. F. THURSTON,
CHARLES HART,
JAMES TILLINGHAST,
JOHN A. GARDNER,
Attorneys for Defendants.

Plaintiff's Joinder in Issue on Defendants' Rejoinder to Plaintiff's First Replication to Defendant's Plea in Abatement (*Filed October 5th*, 1876.)

And the plaintiff, as to the said defendant's rejoinder to the plaintiff's first replication to the defendant's plea in abatement, whereby the said defendant prays that the records of said term of this court here may be seen and inspected, &c., doeth the like.

By its attorney, WM. W. DOUGLAS.

625 *Plaintiff's Joinder in Demurrer.* (*Filed October 5th*, 1876.)

And the plaintiff says that the said plea by the plaintiff in manner and form aforesaid secondly above pleaded in reply to the defendant's plea in abatement, and the matters in the same contained, are good and sufficient in the law to compel the defendant to answer the said writ and declaration of the plaintiff, which said plea of the plaintiff and the matter therein contained the plaintiff is ready to verify, and because the said defendant doth not answer to that plea, or in any manner deny it, the plaintiff prays judgment, and that the said writ and declaration now prosecuted may be adjudged good, and that the said defendant may answer over to the same.

By its attorney, WM. W. DOUGLAS.

Agreement for Judgment. (*Filed Nov.* 15, 1876.)

In the above-entitled cause it is agreed that all pleadings save the general issue and joinder thereto be withdrawn, and that the defendants shall submit to final judgment for the plaintiff at the next June term of this honorable court for the amount of the notes declared

on, with interest, less amounts, with interest that shall have been paid thereon, and for costs.

WM. W. DOUGLAS,
Counsel for Plaintiff.
B. F. THURSTON,
CHAS. HART,
JAS. TILLINGHAST,
J. A. GARDNER,
Counsel for Defendants.

And said cause was further continued from term to term until the present November term, 1878, when, to wit, on the 12th day of December, A. D. 1878, the following judgment was entered:

626 *Judgment.*

It is considered by the court here that the plaintiff have and recover of the defendant the sum of fifty-nine thousand and eighty-four $\frac{04}{100}$ dollars, debt, and costs of suit, taxed at one hundred and sixty-four $\frac{66}{100}$ dollars, and have execution therefor.

Circuit Court of the United States, District of Rhode Island.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the foregoing pages contain a true copy of the original writ, with extract from the marshal's return thereon, extract from the declaration, with the pleas, replication, joinders, and demurrers, with agreement for and judgment filed and entered in the cause, National Bank of Commerce, in New York, against the A. & W. Sprague Manufacturing Company.

In testimony whereof I have hereunto set the seal of said court and my hand this 14th day of May, A. D. 1884.

[SEAL.] HENRY PITMAN, *Clerk.*

EXHIBIT KK.

(Pp. 271–274.)

Referred to by said Henry Pitman and by him furnished to me to be made a part of his deposition.

Attest: I. H. Southwick, Jr., examiner.

RHODE ISLAND DISTRICT, *sc:*

[L. S.] The President of the United States of America to the marshal of said district or to his deputy, Greeting:

Whereas the National Bank of Commerce, in new York, a corporation existing under the laws of the United States and located in the city and county and State of New York, a citizen of the State of New York, by the consideration of the circuit court of the United

States, holden at Providence, within and for Rhode Island
627 district, on the fifteenth of November, anno Domini 1878, recovered judgment against the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly of the State of Rhode Island, having a place of business in the city of Providence, in said State and district, and a citizen of the State of Rhode Island, for the sum of fifty-nine thousand & eighty-four $\frac{04}{100}$ dollars, debt, and one hundred & sixty-four $\frac{66}{100}$ dollars, costs of suit, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the goods, chattels, and real estate of the said A. & W. Sprague Manufacturing Company within your district you cause to be levied and paid unto the said National Bank of Commerce the aforesaid sums, being fifty-nine thousand two hundred & forty-eight dollars and seventy cents in the whole, with one dollar and thirty-five cents more for this writ, together with interest on said debt from said 12 day of December, 1878, until the whole is paid, and therefore [therefrom] also to satisfy yourself for your own fees. Hereof fail not, and make true return of this writ and of your doings thereon to our next circuit court, to be holden at Providence, within and for our district of Rhode Island, on the sixteenth day of June next, the 15th coming on Sunday.

Witness Hon. Morrison R. Waite, our Chief Justice, at Providence, this 13th day of April, in the year eighteen hundred and seventy-nine.

HENRY PITMAN, *Clerk.*

Judgment rendered Dec. 12, 1878.

Debt	59,084 04
Costs	164 66
	59,248 70
Execution	1 35

U. S. Marshal's Return.

RHODE ISLAND DISTRICT, *sc:*

PROVIDENCE, *October 1st*, 1879.

On the 30th day of April, A. D. 1879, at one o'clock and 30 minutes in the afternoon, I levied this execution on all the
628 right, title, and interest which the A. & W. Sprague Manufacturing Company, which Fanny Sprague, which Mary Sprague, of Providence, which Amasa Sprague, of Cranston, had in and to all the real estate attached on the original writ in this suit on the 21st day of December, A. D. 1875, at eleven o'clock & 55 minutes in the forenoon, and which said real estate is hereinafter more fully described.

After having set up notifications of such levy in three or more public places in each of the towns where said real estate lies for the space of three months after such levy, and before exposing the same for sale, and also after causing advertisements thereof to be published

once a week for the space of three weeks next before the time of such sale in a newspaper in each county where said estate lies, I, on the 4th day of September, A. D. 1879, at 11 o'clock a. m., at the U. S. marshal's office, in said city of Providence, sold at public auction all the right, title, and interest which the said A. & W. Sprague Manufacturing Company had at the time of the attachment on the original writ in and to the following-described real estate situated in said city of Providence, to wit:

* * * * * * *

On the 5th day of September, A. D. 1879, at 11 o'clock in the forenoon, I made further service of this execution, and sold at public auction, at the Washington county court-house, South Kingston, Rhode Island, all the right, title, and interest which the said A. & W. Sprague Manufacturing Company had on the 21st day of December, A. D. 1875, at 11 o'clock & 55 minutes in the forenoon (the time when the property was attached), in and to—

All that tract of land situate in the town of South Kingston, Washington county and State of Rhode Island, together with the mansion house, stables, out-houses, and improvements thereon, being the estate now or recently occupied as the residence of William Sprague and family and bounded as follows, viz: Northwesterly by land now or formerly of Jeremiah P. Robinson, on which it measures about sixteen hundred and thirty-four (1,634) feet; northerly by the road leading from Kingston Hill to Narragansett Pier, on which it measures about 1,300 feet; northeasterly by land of James Dillon & others, on which it measures about 3,415 feet; northerly by
629 Pettyquamsett cove, on which it measures about 3,500 feet; easterly by land of George L. Hazard, on which it measures about 1,187 feet; northerly by said Hazard land, on which it measures about 2,954 feet, and by Pettyquamsett cove, on which it measures about 1,500 feet; southeasterly by the Atlantic Ocean, on which it measures about 5,300 feet; southwesterly by land now or formerly of Attmore Robinson and others and the aforesaid road leading from Kingston hill to Narragansett Pier, on which it measures about 3,800 feet; southeasterly by land of Elisha Watson and Charles Hazard, on which it measures about 2,340 feet, and southwesterly by land of said Charles Hazard and a cross-road, on which it measures about 1,860 feet, containing 428 acres of land, more or less, including the ponds embraced within said bound, for the sum of one hundred dollars, to the National Bank of Commerce, in New York, who was the highest bidder for the same at the sum named.

The entire amount of such sales was $6,605.00. The costs on this writ were $371.72, leaving a balance of six thousand two hundred thirty-three $\frac{28}{100}$ dollars, which I have paid to Wm. W. Douglas, Esq., attorney for the plaintiff, leaving the execution unsatisfied as to the remainder due thereon.

JAMES H. COGGESSHALL,
U. S. Marshal.

Circuit Court of the United States, District of Rhode Island, *sc:*

I, Henry Pitman, clerk of said court for said district, do hereby certify that the above and foregoing four pages contain true copies of the original execution, with an abstract of the marshal's return thereon, in the cause, National Bank of Commerce, in New York, *v.* The A. & W. Sprague Manufacturing Company, now on file in this office.

In testimony whereof I have hereunto set the seal of said court and my hand this 14th day of May, A. D. 1884.

[SEAL.] HENRY PITMAN, *Clerk.*

630 EXHIBIT LL.

(Pp. 275–283.)

Referred to by said Henry Pitman and by him furnished to me to be made a part of his deposition.

Attest: I. H. Southwick, Jr., examiner.

DISTRICT OF RHODE ISLAND, *sc:*

[L. S.] The President of the United States of America to the marshal of said district or to his deputy, Greeting:

We command you to summon William Sprague, of South Kingston, in the county of Washington and State of Rhode Island, a citizen of the State of Rhode Island; Amasa Sprague, of Cranston, in the county of Providence and State of Rhode Island; William Brenton Greene, of the city and county of Newport, in said State, a citizen of the State of Rhode Island; Albert S. Gallup and Nehemiah Knight, both of the city and county and State of New York, both citizens of the State of New York, surviving partners of the firm of Hoyt, Sprague & Co., a firm formerly doing business in said city of New York and consisting of the above-named defendants, and Edward Hoyt, late of said New York, deceased, merchant, *alias* gentlemen, and all citizens of the United States, if they may be found within your precincts, to answer the complaint of Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, and a citizen of the State of Pennsylvania and of the United States, at the next circuit court to be holden at Providence, within and for the district of Rhode Island, on the fifteenth day of November next ensuing the date hereof, in an action of the case, for that the defendants have not kept and performed their promises to the plaintiff made, but the same have broken, as by declaration to be filed in court will be fully set forth, to the damage of the plaintiff forty thousand dollars. Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-third day of October, in the year 1875.

HENRY PITMAN, *Clerk.*

631 UNITED STATES OF AMERICA, }
District of Rhode Island, } *sc:*

In the city of Newport, in said district of Rhode Island, October 26th, A. D. 1875, I have this day summoned the within-named William Brenton Greene, as within commanded, by leaving an attested copy of this writ at his last and usual place of abode in said city of Newport, the said defendant not being personally by me to be found within said district.

GEORGE MANCHESTER,
Deputy U. S. Marshal.

Service	2 00
Copy	1 00
Travel	1 80
	$4 80

DISTRICT OF RHODE ISLAND, *sc:*

PROVIDENCE, *October 25th*, 1885.

I have this day, as within commanded, summoned the within-named William Sprague and Amasa Sprague by reading this writ to them in their presence and hearing and delivering to each of them a true and attested copy hereof. No service was made on Albert S. Gallup or Nehemiah Knight, as they are not residents of this district and could not be found therein.

JAMES H. COGGESHALL,
U. S. Marshal.

Service	4 00
Copies	2 00
Travel	24
	$6 24

DISTRICT OF RHODE ISLAND, *sc:*

[L. S.] The President of the United States of America to the marshal of said district or to his deputy, Greeting:

On this mesne process we command you to attach the goods and chattels and real estate of William Sprague, of South King-
632 ston, in the county of Washington & State of Rhode Island, being a citizen of said State of Rhode Island; Amasa Sprague, of Cranston, in the county of Providence, & a citizen of said State of R. I.; William Brenton Greene, of the city and county of Newport and a citizen of said State of R. I., & Albert Gallup & Nehemiah Knight, both of city & county of New York & citizens of State of N. Y., surviving partners of the firm of Hoyt, Sprague & Co., a firm formerly doing business in said city of New York, and consisting of the above-named defendants and Edwin Hoyt, late a citizen of said State of New York, deceased, merchants, *alias* gentlemen, and all citizens of the United States (if they may be found in your precinct),

and them in safe custody keep, and also to attach their stock or shares in any banking association or incorporated company to the value of forty thousand dollars, and to summon the said Wm. Sprague, Amasa Sprague, William Brenton Greene, Albert Gallup, & Nehemiah Knight to answer the complaint of Evan Randolph, of the city & county of Philadelphia, in the State of Pennsylvania, a citizen of said State of Pennsylvania, in the case of Evan Randolph against said defendants, now pending in the circuit court at Providence, within and for the district of Rhode Island, forthwith in an action of the case, for that the defendants have not kept and performed their promises to the plaintiff made, but the same has [have] broken, as by declaration to be filed in court will be fully set forth, to the damage of the plaintiff forty thousand dollars. Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of August, in the year 1882.

HENRY PITMAN, *Clerk.*

I, Richard B. Comstock, agent of the plaintiff named in the within writ, make affidavit and say that the said plaintiff has a just claim against the defendants named in said writ that is due, upon which he expects to recover in said action a sum sufficient to give jurisdiction to the court to which said writ is returnable.

That since the contracting of said debt the defendants have been the owners of property or in the receipt of an income which
633 they have refused or neglected to apply towards the payment thereof, though requested by the plaintiff so to do.

RICHARD B. COMSTOCK,
Agent of Plaintiff.

Subscribed and sworn to, in Providence, in the county of Providence, this 14th day of August, A. D. 1882.

Before me—

EUGENE F. NOONAN,
Notary Public.

RHODE ISLAND DISTRICT, *sc:*

PROVIDENCE, *August* 19, 1882.

By virtue of this writ, on the 14th day of August, A. D. 1882, at 10 o'clock and 10 minutes in the forenoon, I attached all the right, title, and interest of William Sprague and Amasa Sprague, within named, in and to the following-described real estate, to wit: That estate lying about one mile north of Narragansett Pier, in South Kingston, R. I., and known as "Canonchet estate," with all the buildings and improvements thereon; said estate contains about 408¼ acres of land, lying both sides of the road from Kingston to Narragansett Pier, being now or formerly the residence of William Sprague and family, by leaving a true and attested copy of this writ, with my doings thereon, with the town clerk of South Kingston, and have also left an attested copy of this writ, with a general reference thereon to the real estate attached thereby, together with a statement of the date

and time of day of said attachment, with each of said defendants personally, the said William and said Amasa Sprague. I also summoned the said William Sprague on the 14th day of August, 1882, and the said Amasa Sprague on the 15th day of August, 1882, by delivering to each an attested copy of this writ.

JAMES H. COGGESHALL,
U. S. Marshal.

634 DISTRICT OF RHODE ISLAND, *sc:*

U. S. Circuit Court. Nov. Term, A. D. 1875.

EVAN RANDOLPH
vs.
WM. SPRAGUE *et als.*

Evan Randolph, of the city and county of Philadelphia and a citizen of the State of Pennsylvania and a citizen of the United States, complains of William Sprague, a citizen of Rhode Island, of South Kingston, in the county of Washington, State of Rhode Island, within said district; Amasa Sprague, a citizen of Rhode Island, of Cranston, in the county of Providence, in said State and district of Rhode Island, and William Brenton Greene, a citizen of Rhode Island, of the city and county of Newport, in said State and district of Rhode Island, who, with Edwin Hoyt, late a citizen of New York State, of the city, county, and State of New York, deceased, and Nehemiah Knight and Albert S. Gallup, citizens of the State of New York, both of said city of New York (who, not being residents of or to be found within this district, were not served with the original process in this suit), formerly did business in said city of New York under the firm name of Hoyt, Sprague & Co., all citizens of the United States, summoned by the marshal in an action of the case—

For that Aborn Levis, on the 3rd day of July, 1873, at said New York, to wit, at said Providence, drew an order in writing of that date, by him signed, and directed the same to said Hoyt, Sprague & Co., therein requesting the said Hoyt, Sprague & Co. to pay to the order of himself, said Aborn Levis, four months after date, the sum of two thousand five hundred dollars ($2,500), and charge the same to the account of said Aborn Levis, for value received; and the said Aborn Levis thereafterwards, to wit, on the same day, presented the same to said Hoyt, Sprague & Co., which the said Hoyt,
Sprague & Co. then and there accepted to pay, and thereby
635 became liable to pay the same according to the tenor thereof;
and the said Aborn Levis thereafterwards, on the same day, endorsed the same, then and still unpaid, and delivered the same to the plaintiff, for value received, by means whereof the said Hoyt, Sprague & Co. became liable, and, in consideration thereof, then and there promised the plaintiff to pay the same according to the tenor and effect of said order, and of said Hoyt, Sprague & Co.'s acceptance thereof and the endorsement thereon, yet, though said four months have elapsed, and though often requested, according to

the tenor thereof, said Hoyt, Sprague & Co. and the defendants have hitherto refused and still refuse to pay the same. * * *

To the plaintiff's damage forty thousand dollars, as laid on this writ, dated Oct. 23, A. D. 1875.

Wherefore he sues.

By his att'y, E. C. MOWRY.

And said cause was continued from term to term to the November term, A. D. 1882, when the following agreement was filed:

Agreement.

In the above-entitled action it is agreed that the following entry be made:

Judgment for the plaintiff for thirty-four thousand five hundred dollars ($34,500) and execution to issue on or before March 6th, 1883.

E. C. MOWRY, *Pl'ff's Att'y.*
A. B. PATTON,
Att'y for Amasa Sprague and William Sprague.

Judgment.

Whereupon it is considered by the court here that the plaintiff have and recover of the defendants the sum of thirty-four thousand five hundred dollars ($34,500), debt, and cost of suit, taxed at one hundred and fifty-one dollars and sixty-one cents ($151.61), and have execution therefor.

636 RHODE ISLAND DISTRICT, *sc:*

[L. S.] The President of the United States of America to the marshal of said district or to his deputy, Greeting:

Whereas Evan Randolph, of the city & county of Philadelphia, in the State of Pennsylvania, a citizen of said State of Pennsylvania, by the consideration of the circuit court of the United States holden at Providence, within and for Rhode Island district, on the fifteenth of November, anno Domini 1882, recovered judgment against William Sprague, of South Kingston, in the county of Washington, State of Rhode Island, — Amasa Sprague, of Cranston, in the county of Providence, State of Rhode Island, both citizens of said State, for the sum of thirty four thousand five hundred dollars, debt, & one hundred & fifty-one $\frac{61}{100}$ dollars, costs of suit, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the goods, chattels, and real estate of the said William Sprague — Amasa Sprague within your district you cause to be levied and paid unto the said Evan Randolph the aforesaid sums, being thirty-four thousand six hundred & fifty-one $\frac{61}{100}$ dollars in the whole, with one dollar and thirty-five cents more for this writ, together with interest on said debt from said — of —— until the whole is paid, and therefore also to satisfy yourself for your own fees. Hereof fail not, and make true return of this writ

and of your doings thereon to our next court, to be holden at Providence, within and for our district of Rhode Island, on the fifteenth day of June next.

Witness Hon. Morrison R. Waite, our Chief Justice, at Prov., this 7th day of March, in the year eighteen hundred and eighty-three.

HENRY PITMAN, *Clerk.*

Judgment rendered November term, 1882, to wit, March 7, 1883 (Assumpsit.)

Debt	34,500	00
Costs	151	61
	34,651	61
Ex'on	1	35

637 DISTRICT OF RHODE ISLAND, *ss:*

* * * On the 7th day of March, 1883, at 11¼ o'clock and 30 minutes in the forenoon, I levied this execution on all the right, title, and interest which the said William Sprague and the said Amasa Sprague had on the 14th day of August, 1882, at 10 o'clock and 10 minutes in the forenoon (the date of the attachment on writ of mesne process), in and to the following-described real estate, to wit:

That estate lying about one mile north of Narragansett Pier, in South Kingston, R. I., and known as the "Canonchet estate," with all the buildings and improvements thereon. Said estate contains about 408¼ acres of land, lying both sides of the road from Kingston to Narragansett Pier, being now or formerly the residence of William Sprague and family.

And I set up notifications of such levy in three public places in said town of South Kingston for the space of three months after such levy and before the same was exposed to sale, notifying all persons concerned of the levy and intended sale of said real estate; and I also notified such sale by causing an advertisement thereof to be published once a week for the space of three weeks next before the time of such sale in the Narragansett Times, a newspaper printed and published in the county where such real estate lies, a copy of which advertisement is hereto annexed, marked "C."

And on the 23rd day of June, 1883, at 11 o'clock in the forenoon, pursuant to said advertisement, I sold said real estate at public auction to Evan Randolph for the sum of one hundred dollars, he being the highest bidder therefor and that being the highest sum bid, which said sum the said Evan Randolph hath since well and truly paid me.

"C."

U. S. Marshal's Sale.

By virtue of an execution issued from the circuit court of the United States holden at Providence, within and for the Rhode

Island district, on the 15th day of November, A. D. 1882, returnable to said court at its June term, 1883, Evan Randolph, of the
638 city and county of Philadelphia, in the State of Pennsylvania, plaintiff, against Wm. Sprague, of South Kingston, in the county of Washington and State of Rhode Island; Amasa Sprague, of Cranston, in the county of Providence, in said State of Rhode Island, defendants, will be sold at public auction, at the U. S. marshal's office, Custom-House building, Providence, R. I., on Saturday, the 23rd day of June, 1883, at 11 o'clock a. m., all the right, title, and interest which the said William Sprague and the said Amasa Sprague had on the 14th day of August, A. D. 1882, at 10 o'clock and 10 minutes in the forenoon (the date of the attachment of mesne process), in and to the following-described real estate, to wit:

That estate lying about one mile north of Narragansett Pier, in South Kingston, R. I., and known as the "Canonchet estate," with all the buildings and improvements thereon. Said estate contains about 408¼ acres of land, lying both sides of the road from Kingston to Narragansett Pier, being now or formerly the residence of William Sprague and family.

Levied on March 7th, 1883, at 11 o'clock and 30 minutes in the forenoon. Sold to satisfy said execution, if sufficient.

JAMES H. COGGESHALL,
U. S. Marshal, R. I. District.

CIRCUIT COURT OF THE UNITED STATES, *District of Rhode Island,* } *ss:*

I, Henry Pitman, clerk of said court for said district, do hereby certify that the above and foregoing twelve pages contain true copies of the original writ and writ of mesne process, with the marshal's returns thereon, extract from the declaration, and the judgment, execution, and extract of the marshal's return thereon filed in the case of Evan Randolph *v.* William Sprague and others now on file in this office.

In testimony whereof I have hereunto set the seal of said court and my hand this 14th day of May, A. D. 1884.

[SEAL.] HENRY PITMAN, *Clerk.*

639 *Deposition of Charles Blake.*

CHARLES BLAKE, of Providence, in the county of Providence and State of Rhode Island, being affirmed to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the said William Sprague, one of the respondents in said suit, doth depose and say as follows:

To questions proposed by ANDREW B. PATTON, of counsel for said William Sprague:

Int. 1. What is your name, residence, and occupation?

A. Charles Blake; residence, Providence; occupation, clerk of the supreme court of Rhode Island, Providence county.

Int. 2. Have you in your custody as said clerk original papers in suit at law, Winthrop De Wolf, receiver, *v.* A. & W. Sprague M'f'g Co. *et als.*, entered at the December term, 1877, of the court of common pleas, and came by appeal into the said supreme court ——; if so, will you produce them?

A. I have, and will produce them.

Int. 3. Please annex to this deposition certified copies of the original writ and of that part of the officer's return of service of the said writ which was made on the property of the defendants, A. & W. Sprague M'f'g Co., in the town of South Kingston; also copy of the commencement, the first count, and the conclusion of the plaintiff's declaration; also copies of all subsequent pleadings, including the joinder of issue; copy of the agreement of verdict and judgment of the said supreme court; also copy of the execution and of that part of the officer's return of service of the execution which was made on the property of said defendant corporation in the town of South Kingston, including the estate in controversy in this suit, and make the same a part of this deposition.

A. I do annex them and make them a part of this deposition.

(The papers referred to in this question are hereunto annexed as Exhibit MM.)

CHARLES BLAKE.

Subscribed by said Charles Blake in my presence this fourteenth day of May, A. D. 1884.

I. H. SOUTHWICK, Jr., *Examiner.*

640 (Andrew B. Patton notifies me that, on behalf of said William Sprague, he may desire to ask for further time to take testimony in this cause.

I. H. SOUTHWICK, Jr., *Examiner.*

C. Frank Parkhurst, on behalf of said Zechariah Chafee, trustee and assignee, defendant, notifies me to complete and file the record of testimony in this cause on or before the sixteenth day of May, A. D. 1884.

I. H. SOUTHWICK, Jr., *Examiner.*)

EXHIBIT MM.

Comprising the following pages, numbered 285 to 295, both included, referred to by said Charles Blake in his foregoing deposition, and by him furnished to me to be made a part thereof.

Attest: I. H. Southwick, Jr., examiner.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

[L. s.] To the sheriffs of our several counties or to their deputies, Greeting:

We command you to attach the goods and chattels and real estate of the A. & W. Sprague Manufacturing Company, a manufacturing

corporation created by our General Assembly, William Sprague, of South Kingston, in our county of Washington, and Amasa Sprague, of Cranston, in our county of Providence, copartners as A. & W. Sprague, and them in said custody keep, in the value of one million dollars, and summon the said The A. & W. Sprague Manufacturing Company, William Sprague and Amasa Sprague, to answer the complaint of Winthrop De Wolf, of Providence, in our said county of Providence, receiver of the Franklin Institution for Savings, at the next court of common pleas to be holden at Providence, within and for our said county of Providence, on the first Monday
641 of December next ensuing the date hereof, in an action of the case, for that the defendants have not kept their promises made to said Franklin Institution for Savings and to said plaintiff, but the same have broken as by declaration to be filed in court will be fully set forth, to the damage of the plaintiff one million dollars. Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this tenth day of November, in the year 1877.

GEO. C. WEBSTER, *Clerk.*

I, Winthrop De Wolf, receiver, the plaintiff named in the within writ, make affidavit and say that I, in my capacity as within stated, have a just claim against the defendant named in said writ that is due, upon which I expect to recover in said action a sum sufficient to give jurisdiction to the court to which said writ is returnable.

That since the contracting of said debt the defendants have been the owners of property and in the receipt of an income which they have refused and neglected to apply towards the payment thereof, though requested by the plaintiff so to do.

WINTHROP DE WOLF, *Receiver.*

Subscribed and sworn to in Providence, in the county of Providence, this 10th day of November, A. D. 1877.

Before me—

G. M. CARPENTER, JR.,
Notary Public.

WASHINGTON, *sc:*

SOUTH KINGSTON, *November 12th, A. D.* 1877.

I have this day, at eight o'clock and forty-five minutes a. m., attached all the interest of the defendant corporation within named in the following-described real estate situate in said South Kingston:

Those parcels of land situate northerly from Narragansett
642 Pier, so called, with the mansion house, stables, and other buildings and improvements thereon, being the estate now or recently occupied as the residence of William Sprague with all the lands used therewith and all the rights, privileges, and appurtenances thereto belonging, by leaving an attested copy of this writ, with a copy of my doings thereon, with the town clerk of said South Kingston.

And have left an attested copy of this writ, with a general reference thereon to the real estate attached thereby, together with a statement of the date and time of day of such attachment, with the person in possession of said real estate.

EDWARD TUCKER,
Deputy Sheriff.

Fees received:

Service	75
2 copies	3 60
Travel	4 00
Percentage	499 75
	$508 10

EDWARD TUCKER,
Deputy Sheriff.

PROVIDENCE, *sc:*

Court of Common Pleas. December Term, A. D. 1877.

Winthrop De Wolf, of Providence, in said county, receiver of the Franklin Institution for Savings, a corporation created by the General Assembly, duly appointed and acting as such under the decree of the supreme court, pursuant to the statute in such case provided, complains of the A. & W. Sprague Manufacturing Company, a manufacturing corporation created by the General Assembly and established in Providence, in said county; William Sprague, of South Kingston, in the county of Washington, and Amasa Sprague, of Cranston, in said county of Providence, copartners as A. & W. Sprague, the real estate of said corporation and said Amasa
643 Sprague having been attached, and said defendants having been summoned by the sheriff in an action of the case: For that the defendant corporation at said Providence, on the fourth day of August, A. D. 1873, by its promissory note in writing of that date, by its treasurer signed, for value received, promised to pay Charles Greene or order, the sum of fifty-seven thousand dollars in six months after date at the Globe National Bank; and said Charles Greene afterwards, to wit, on the same day, endorsed and delivered said note to said William Sprague and Amasa Sprague, copartners as aforesaid; and said William Sprague and Amasa Sprague afterwards, to wit, on the same day, endorsed and delivered said note to said institution; and the plaintiff avers that afterwards, at the time and place when and where the said note became due, the said note was duly presented for payment, and payment thereof was refused, of all which the defendants, William Sprague and Amasa Sprague, copartners as aforesaid, to wit, on the day last aforesaid, had notice, whereby the defendants became liable, and in consideration thereof promised the said institution to pay to said institution the contents of said note according to the tenor thereof.

* * * * * * *

And also for such money before that time lent and advanced to

the defendants at their request by said institution and the plaintiff as receiver, and also for so much money for interest for forbearance by said institution and the plaintiff, as receiver, at the defendants' request of moneys due and owing from the defendants to said institution, and the plaintiff, as receiver, then and there in consideration thereof promised said institution, and the plaintiff, as receiver, to pay said sum of money last mentioned on request.

Yet, though requested, the defendants have not, nor has either of them, paid said sums or any part thereof, but ever have refused and do refuse to pay the same, to the damage of said institution, and the plaintiff, as receiver, one million dollars, as laid in this plaintiff's writ, dated the tenth day of November, A. D. 1877.

Wherefore he sues.

By his attorney, GEO. M. CARPENTER, JR.

644 PROVIDENCE, *sc:*

Court of Common Pleas. December Term, A. D. 1877.

WINTHROP DE WOLF, Receiver, *vs.* A. & W. SPRAGUE M'F'G CO. *et al.* } No. 8354.

And the said defendant, The A. & W. Sprague M'f'g Co., comes and defends, &c., when, &c., and says that it ought not to be compelled to answer the said writ and declaration of the plaintiff, because it says that the said plaintiff, in his said capacity as receiver, heretofore and prior to the suing out of said writ, to wit, at a supreme court of the State of Rhode Island, holden at Providence, in said county of Providence, on the first Monday of October, A. D. 1875, impleaded the said defendant, The A. & W. Sprague M'f'g Co., in an action of the case and for the same cause in the declaration aforesaid above mentioned, as by the record thereof in the same court remaining appears, and that the parties aforesaid to and in the plea aforesaid in the said supreme court and the said De Wolf, receiver, the now plaintiff, and the said A. & W. Sprague M'f'g Co. are the same persons and parties plaintiff and defendant as in said former action; and said A. & W. Sprague M'f'g Co. duly appeared and pleaded in said former action, and issue was duly joined by said plaintiff thereon, and that the plea aforesaid in said supreme court was, at the October term, A. D. 1877, of said supreme court, on the eleventh day of said term, which was on the 12th day of October, A. D. 1877, called in its order on the docket of said court, and continued to the next March term of said supreme court, and that after the said continuance and before the commencement of the present suit, although the said supreme court had not, during such time, adjourned said October term to meet again according to law, the plaintiff did not, neither did his counsel, notify the defendant or its counsel of any motion in or
645 action proposed relative to said case by him or his counsel, nor did the plaintiff or his attorney file in the office of the clerk of said supreme court for said county a written notice of discontiuuance signed by said plaintiff or his attorney and stating

therein that said action was discontinued and the time of discontinuance thereof, and give a copy of such notice immediately to the defendant or any one of its attorneys of record; but, on the contrary thereof, the plaintiff filed, without notice to or leave of court, with the clerk of said court, on the 9th day of November, A. D. 1877, at 5 o'clock and 45 minutes p. m., a paper containing the words and figures following, to wit:

PROVIDENCE, *sc:*

"Supreme Court. October Term, 1877.

WINTHROP DE WOLF, Receiver, *v.* THE A. & W. SPRAGUE M'F'G CO. } No. 9341.

The plaintiff in said action hereby discontinues the same this 9th day of November, 1877, at five o'clock and forty-five minutes in the afternoon.

By his attorney, G. M. CARPENTER, JR."

And did not give to the defendant or any one of its attorneys of record a copy of such notice until ten o'clock and forty-five minutes in the forenoon of the next day and until after the suing out of this writ in the present suit, and this it is ready to verify. Wherefore the said A. & W. Sprague M'f'g Co. prays judgment if it ought to be compelled to answer to the writ and declaration aforesaid.

By its attorneys, J. A. GARDNER,
J. TILLINGHAST,
C. HART,
B. F. THURSTON.

646 And the said defendants, Amasa Sprague and William Sprague, declared against as copartners as A. & W. Sprague, come and defend, &c., when, &c., and say that they never promised in manner and form as the plaintiff hath in his declaration thereof declared against them, and of this they put themselves upon the country.

By their attorneys, J. A. GARDNER,
J. TILLINGHAST,
C. HART,
B. F. THURSTON.

Court of Common Pleas. December Term, 1877.

PROVIDENCE, *sc:*

WINTHROP DE WOLF, Receiver, *v.* THE A. & W. SPRAGUE MANUFACTURING COMPANY and Others. } No. 8354.

And the said plaintiff saith that the plea of the defendant, The A. & W. Sprague Manufacturing Company, herein pleaded, and the

matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to abate the said writ, and that the plaintiff is not bound by the law of the land to answer the same, and this he is ready to verify. Wherefore, for want of a sufficient plea in this behalf, the plaintiff prays judgment, &c.

By his attorney, G. M. CARPENTER, JR.

And the said plaintiff, as to the plea of the defendants, William Sprague and Amasa Sprague, herein pleaded, in which the said defendants put themselves upon the country, doth the like.

By his attorney, G. M. CARPENTER, JR.

647 Supreme Court. Oct. T., 1878.

PROVIDENCE, *sc:*

W. DE WOLF, Receiver,
v.
THE A. & W. SPRAGUE M'F'G Co. and Others. } No. 700.

The parties hereby waive jury trial herein.

G. M. CARPENTER, JR.,
Pl'ff's Att'y.
C. HART.
J. TILLINGHAST.

Nov. 30, 1878.

Docket Supreme Court. Oct. Term, 1878.

Declarations and appeals continued to October term, A. D. 1878, 700 v., &c. Winthrop De Wolf, rec., *v.* A. & W. Sprague M'f'g Co. *et al.*, app'ts. (A. G. CH. / T. Th.) 46th day, jury trial waived; heard 69th day; opinion delivered 7th day; judgment for pl'ff for $826,912.78 & costs as of November 30, 1878.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

Whereas Winthrop De Wolf, of Providence, in our county of Providence, receiver of the Franklin Institution for savings, a corporation created by the General Assembly, appointed and acting as such under the decree of the supreme court, by the consideration of our supreme court, holden at Providence, within and for our county of Providence, on the first Monday of October last past, recovered judgment against the A. & W. Sprague Manufacturing Company, a corporation created by the General Assembly and established in Providence, in said county; William Sprague, of South Kingston, in our county of Washington, and Amasa Sprague, of Cran-
648 ston, in said county of Providence, copartners as A. & W. Sprague, for the sum of $826,912.78, debt or damages, and

$24.85, costs of suit, as to us appears of record, whereof execution remains to be done:

We command you, therefore, that of the goods and chattels and real estate attached of the defendants within your precinct you cause to be levied and paid unto the said plaintiff the aforesaid sums, being eight hundred and twenty-six thousand nine hundred and thirty-seven dollars and sixty-three cents in the whole, with twenty-five cents more for this writ; and thereof also to satisfy yourself for your own fees.

Hereof fail not, and make due return of this writ and of your doings thereon to our next supreme court, to be holden at Providence, within and for our county of Providence, on the fourth Monday of March inst.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this fifteenth day of March, in the year one thousand eight hundred and seventy-nine.

CHARLES BLAKE, *Clerk.*

Judgment was rendered on the 30th day of Nov., A. D. 1878, in an action of the case upon promissory notes and bills of exchange.

WASHINGTON, *sc:*

In South Kingston, in said county, on this 20th day of March, 1879, at 3 o'clock in the afternoon, I have levied the within execution on the following-described real estate of the within-named A. & W. Sprague Manufacturing Company, attached on original writ and situated in said South Kingston, and being those parcels of land situated to the northerly of Narragansett Pier, so called, with the mansion house, stables, and other buildings and improvements thereon, being the estate now or recently occupied as the residence of William Sprague, with all the lands used therewith and all the rights and privileges and appurtenances thereto belonging, being the same which was conveyed to the A. & W. Sprague Manufacturing Company by deed from the Niantic Bank, and is known as the Robinson farm, containing about 375 acres, and have advertised the same to be sold at public auction, at the court-house, in
649 said South Kingston, on Saturday, September 27th, A. D. 1879, at 12 o'clock noon, by posting up notice of said sale in three public places in South Kingston, viz., at the post office in the village of Kingston & at the office of the town clerk in said town and at the post office at Narragansett Pier.

EDWARD TUCKER,
Deputy Sheriff.

WASHINGTON, *sc:*

In South Kingston, on the 5th day of September, 1879, I have advertised the within-named real estate to be sold by public auction, at the court-house, in South Kingston, on Saturday, the 27th day of September, 1879, at twelve o'clock noon, by advertisement in the Narragansett Times, a newspaper printed and published in South Kingston, and in each issue of that newspaper from September 5, 1879,

to September 26, 1879, inclusive—that is to say, on the 5th, 12th, 19th, and 26th days of September, 1879; and on said 27th day of September, 1879, at twelve o'clock noon, at the court-house, in said South Kingston, pursuant to said notice, I sold said real estate by public auction to Winthrop De Wolf, of Providence, receiver of the Franklin Institution for Savings, for the sum of five dollars, he being the highest bidder for the same.

EDWARD TUCKER,
Deputy Sheriff.

Fees levy	50
Travel to levy & advertise and posting notices	3 90
Advertising	1 00
Travel to advertise in Times	3 00
Printing in Times	7 50
Deed	3 00
Executing deed	2 00
Delivery of possession	1 00
Selling	5 00
	$26 90

Paid.

EDWARD TUCKER,
Deputy Sheriff.

650 STATE OF RHODE ISLAND, *sc:*

PROVIDENCE, *sc:*

CLERK'S OFFICE, SUPREME COURT,
PROVIDENCE, *May* 15, 1884.

I certify that the foregoing 12 pages contain true copies of the original writ and of that part of the officer's return of service of said writ which was made on the property of the defendant, A. & W. Sprague M'f'g Co., in the town of South Kingston; also of the commencement, 1st count, & the conclusion of the pl'ff's declaration; also of all subsequent pleadings, including the joinder of issue; also the agreement of verdict and judgment of the said supreme court; also of the execution & of that part of the officer's return of service of the execution which was made on the property of said defendant corporation in the town of South Kingston in case — Winthrop De Wolf, receiver, *vs.* A. & W. Sprague M'f'g Co. *et al.*, now on file in this office.

CHARLES BLAKE, *Clerk.*

651 EXHIBIT No. A 2.

PROVIDENCE, *sc:*

EVAN RANDOLPH
vs.
QUIDNICK COMPANY *et al.*

(Filed October 24, 1884.)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS:

To the sheriff, his deputy, or either of the town sergeants or constables in the county of Providence, Greeting:

Request having been made to me by Mary Sprague to take the deposition of Mary Sprague, Harriet Sprague, and Harriet B. Sprague in perpetual memory, and whereas the residence of Mrs. Mary Sprague, on Young Orchard avenue, is by me appointed the place and the nineteenth (19) day of April, A. D. 1884, at 10 o'clock a. m. the time of taking the same, you are therefore hereby required to notify the Rhode Island National Bank, City Insurance Co., Narragansett Fire and Marine Insurance Co., Liberty Bank, Bank of Commerce, Narraganset Brick Co., Worcester Railroad Co., Globe National Bank, Merchants' Insurance Co., Bank of North America, Atlantic Fire and Marine Insurance Co., Second National Bank, High Street Bank, Roger Williams Insurance Co., Whatcheer Bank, Equitable Insurance Co., Henry Hidden, Union Co., Quidnick Company, A. & W. Sprague M'f'g Co., Amasa Sprague, William Sprague, self and as administrator, Zechariah Chafee, trustee and for self, of the place and time aforesaid, at least twenty-four hours before said time, that they may attend and put interrogatories to the said deponents.

Hereof fail not and make true returns on this writ.

Given under my hand and seal this sixteenth (16) day of April, A. D. 1884.

AMASA M. EATON,
Master in Chancery.

652 PROVIDENCE, *sc:*

In Providence, April 17th, A. D. 1884.—I have this day made service of the within writ, as commanded, by reading it over in the presence and hearing of S. H. Tabor, cashier of the Rhode Island National Bank; Thomas Burgess, secretary of the City Insurance Co.; William H. Fredericks, secretary of the Narragansett Fire and Marine Insurance Co., and also secretary of the Roger Williams Insurance Co.; Charles R. Drowne, cashier of the Liberty Bank; John Foster, cashier of the Bank of Commerce; Nathaniel F. Potter, secretary of the Narragansett Brick Co.; John R. Balch, treasurer of the Worcester Railroad Co.; Theophilus Salisbury, cashier of the Globe National Bank; William P. Goodwin, secretary of the Merchants' Insurance Co.; Charles E. Jackson, cashier of the Bank of

North America; F. W. Haywood, secretary of the Atlantic Fire and Marine Insurance Co.; William W. Paine, cashier of the Second National Bank; Henry A. Hidden, for self and of the Whatcheer Bank; Frederick W. Arnold, secretary of the Equitable Insurance Co.; Charles B. Gould, treasurer of the Union Company, and also the Quidnick Company; Amasa Sprague, for self, and also as treasurer of the A. & W. Sprague M'f'g Co.; William Sprague, for self and as administrator on the estate of Fanny Sprague, and by leaving an attested copy of this writ at the last and usual abode of Zechariah Chafee (as trustee and for self) within my precinct; and I have also, on this 18th day of April, A. D. 1884, read this writ over in the presence of Elijah Allen, cashier of the High Street Bank, within my precinct.

CHARLES H. BROWN, *Constable.*

Services and fees and travel and copy, $6.20.

Be it remembered that in the city of Providence, in the county of Providence and State of Rhode Island, before me, Amasa M. Eaton, a master in chancery, this nineteenth day of April, A. D.
653 1884, at the residence of Mary Sprague, on Young Orchard avenue, personally came before me Mrs. Mary Sprague, Mrs. Harriet Sprague, and Mrs. Harriet B. Sprague, who, being by me duly sworn, did severally depose as follows hereinafter, and there were also present Andrew B. Patton, of counsel for Mrs. Mary Sprague and Mrs. Harriet Sprague; Rathbone Gardner, of counsel for the Union Company and the Quidnick Company; William W. Douglas, of counsel for Henry A. Hidden, supposed to be meant by the name of Henry Hidden, but without waiving any benefit of misnomer; C. Frank Parkhurst, of counsel for Zachariah Chafee, without waiving the protest hereinafter made, and of counsel for the Second National Bank, the Globe National Bank, and Henry A. Hidden.

Deposition of Mrs. Mary Sprague, Sworn.

Mr. C. Frank Parkhurst, on behalf of Zechariah Chafee, trustee, and Zechariah Chafee, individually, protests against the taking of this deposition at this time for want of due notice to said Chafee, and generally, and for the further reason that it was known to the counsel for Mrs. Mary Sprague and is the fact that said Chafee was and is absent from the city of Providence and State of Rhode Island, in the city of Charleston, State of South Carolina, and so far away that no communication by mail could be had with said Chafee between the service of the notice and the time fixed for the taking of this deposition, and that said Chafee could not possibly be present; and he further moves for the continuance of this hearing on account of the absence of Mr. Benjamin F. Thurston, of counsel for said Chafee, necessarily absent in the city of Washington, D. C., from before the service of notice at said Chafee's residence up to the present time on professional business in the United States Supreme Court, and moves that such postponement be until some other day next week, to be fixed when Mr.

Thurston can be present. Mr. Rathbone Gardner protests
654 against the taking of these depositions at this time by reason of the necessary absence of Mr. Charles H. Parkhurst, senior counsel for the Union Company and the Quidnick Company, who is in attendance upon the supreme court of this State upon the trial of an assigned case.

Interrogatory. What is your name and residence?

Answer. My name is Mary Sprague. I am in my eighty-third year. I reside in Providence.

(Upon motion and agreement of all present, adjourned to Monday morning, April 21st, 1884, at ten o'clock, at the same place.)

PROVIDENCE, *April 21st*, 1884.

The taking of these depositions was resumed, as per above adjournment, April 19th, at the same place.

Present: Messrs. Patton, Parkhurst, Douglas, Gardner, and Hidden.

Upon agreement of all present, adjourned to Thursday morning, April 24, 1884, at ten o'clock, at the same place.

PROVIDENCE, *April* 24, 1884.

By agreement of all concerned, adjourned to Friday morning, April 25, 1884, at ten o'clock, at the same place.

PROVIDENCE, *April 25th*, 1884.

Present: Messrs. Patton, Parkhurst, Douglas, and Mrs. Mary Sprague and Mrs. Harriet Sprague.

Objections previously made are now waived.

Deposition of Mrs. Mary Sprague Resumed.

Int. 2. Are you a stockholder of the A. & W. Sprague M'f'g Co.?

Ans. Yes, I was a stockholder in the A. & W. Sprague M'f'g Co. I suppose I am now.

655 Int. 3. Was the A. & W. Sprague M'f'g Co. financially embarrassed in the fall of 1873?

Ans. Yes; it was.

Int. 4. Were you acquainted with Amos D. Lockwood, Rufus Waterman, and George C. Nightingale in the fall of 1873?

Ans. I was.

Int. 5. Were you present at the house of Mrs. Fanny Sprague, in the city of Providence, on the evening of November 28, 1873? And, if so, state who was present and the purpose of your being there.

Ans. I was there; Messrs. Lockwood, Waterman, and Nightingale, Mr. Benj. F. Thurston, Mr. John A. Gardner, George Harris, Francis W. Latham, Thomas A. Doyle, and Amasa and William Sprague. I think they were all present in Mrs. Sprague's dining-room. Henry Martin was there, the notary; Mrs. Fanny Sprague was there; Mrs. Latham and Mrs. Harriet Sprague were also there.

I went there to sign the trust deed to those three trustees—Messrs. Lockwood, Waterman, and Nightingale—and I signed it, very much against my will.

Int. 6. Who else signed the trust deed mentioned that night?

Ans. I signed it myself and Mrs. Fanny Sprague signed it; Amasa and William Sprague signed it first, and I think I signed it next, before Mrs. Fanny Sprague signed it.

Int. 7. Did Amasa Sprague sign it as treasurer of the A. & W. Sprague M'f'g Co. and for the firm of A. & W. Sprague and individually?

Ans. Well, I think he did.

Int. 8. State whether or not the parties whom you have named as signing the deed, including yourself, acknowledged the deed so signed before the notary, Henry Martin.

Ans. I did and we all did.

Int. 9. State where the deed was signed and where acknowl-
656 edged, as you have stated, and any circumstances you have in mind about the matter.

Ans. It was signed in Mrs. Fanny Sprague's dining-room and acknowledged there. My mind was fully made up that I would not sign the deed. Mr. Hoyt and my two grandsons, Willie Hoyt and Charles Franklyn, came on that day, the 28th. In the evening Mr. Benj. F. Thurston came into this room we are sitting in and had a long talk with Mr. Hoyt about my signing the deed, and he said if I didn't sign it my property would be all attached and I should have to lose my house and go out of it. After he left this room Mr. Hoyt said if all Mr. Thurston had said was true that I had better go over and sign it. My grandsons were very much opposed to my going. In about half an hour after Mr. Thurston left Mr. Doyle came for me and I went with him, being persuaded by what Mr. Hoyt said. When I got over in Mrs. Fanny Sprague's house all these people I have named were in the dining-room and the three trustees were seated at the table and Mrs. Fanny Sprague was seated by their side and there was a seat for me. Mr. John Gardner sat at the table and Mr. George Harris. There was nothing more. I signed it and that finished it, and then they went into the parlor and I talked with these three gentlemen and asked them, What provision are you going to make for me? Mr. Waterman said he would see. I think I came home right after that.

Int. 10. Where was Henry Martin when the deed was signed and at the time he took your and the rest of the signers' acknowledgments?

Ans. He was in the dining-room with us, and stood by the side of Mrs. Fanny Sprague when we acknowledged it.

Int. 11. Were you indebted to any one at the time you signed this deed other than the liability you may have incurred, if any, as a stockholder in the A. & W. Sprague M'f'g Co.?

Ans. I did not owe anybody a dollar.

Int. 12. Did you take any active part in the management of the affairs of the A. & W. Sprague M'f'g Co.?

657 Ans. No; I did not.

Int. 13. Who did manage the affairs of the company?

Ans. Amasa and William Sprague.

Int. 14. Did the gentlemen, Lockwood, Waterman, and Nightingale, accept the deed signed by you, and the others you have mentioned, on the 28th of November, 1873?

Ans. No; they did not accept it.

Int. 15. Were you again present at the house of Mrs. Fanny Sprague on the 1st day of December, 1873? And, if so, state who was present and the purpose of your being there.

Ans. I was not there.

Int. 16. State whether or not you met Mr. Henry Martin, notary public, there or anywhere else on the first day of December, 1873, and whether you signed and acknowledged the deed you state you executed on the 28th day of November to Mr. Zechariah Chafee.

Ans. No; I did not meet him anywhere; I never saw him but once. No; I signed and acknowledged the deed on the 28th of November to the three trustees. I did not sign and acknowledge the deed to Mr. Zechariah Chafee the first of December. I was not consulted about any change and knew nothing about it until the next morning, December second.

Int. 17. Were you acquainted with Mr. Zechariah Chafee at this time; and, if not, when did you first make his acquaintance?

Ans. I was not acquainted with him and I never saw him until two or three days after he was put in trustee, and then I sent for him, and the first time I ever saw him was in this room. I had business with him, for I heard he was going to take Mr. Frieze into the office with him, and I told him if I had anything more to do with the business I didn't want Mr. Frieze in the office, for he had made trouble enough for us.

Int. 18. State whether or not you executed more than one deed on the 28th day of November, 1873, to the three trustees you have named; and, if so, how many.

658 Ans. I think there was more than one, and I don't know but there were three or four.

Int. 19. State whether or not, on the second day of December, 1878, you signed a transfer of the stock owned by you in the Quidnick Company, on the transfer book of the company, to Zechariah Chafee, trustee; and, if so, what led you to make the transfer, and where was the transfer signed by you.

Ans. The transfer was sent over here by George Harris, and I told him I should not sign it. In about an hour afterwards Mr. John Gardner came and Mr. Amasa Sprague, and Mr. Gardner said if I did not sign it my property in the Quidnick Company would be attached. I told him I was not going to sign it to Zechariah Chafee. He told me if I signed it it would be just the same and I could have the interest from it as if it was my own. They told me it was only just a form to save it, and I signed it in this room, on this table (pointing to it).

Int. 20. Was the transfer written on the transfer book before the book was brought for you to sign or after it had been brought here; and, if so, by whom was it written?

Ans. I do not remember.

Int. 21. Was John A. Gardner the attorney who advised you in legal matters?

Ans. Yes; Mr. Thurston and he were my counsel, and all I signed was by their advice. I never should have signed that trust deed if it had not been for Mr. Thurston.

Int. 22. Did Mr. Gardner state to you at this time that Mr. Chafee had been appointed trustee when he induced you to sign the transfer?

Ans. Yes; but I heard of it in the morning, before he came. The way he explained it to me I thought I should hold my stock in that company just the same as if I had not signed this transfer.

Int. 23. Did you believe, from what Mr. John A. Gardner stated to you, that Mr. Chafee had been appointed trustee, and
659 that he held his office under the deed executed by you on the evening of November 28th, 1873?

Ans. No; I did not think so and I did not like to sign this transfer to him, because I did acknowledge him to be my trustee.

Int. 24. In your answer to the suit in equity, People's Savings Bank and others *vs.* Zechariah Chafee and others, you say in that answer that the A. & W. Sprague M'f'g Co. and the other grantors substituted in the place of the said Waterman, Lockwood, and Nightingale the name of Z. Chafee, who at the last moment consented to accept the trust and executed and delivered the said trust deed in the bill mentioned. Where was the answer signed, who wrote it, and what led you to sign the same, or what did you understand you were signing when you signed the answer?

(Objected to by Messrs. Douglas and Parkhurst as assuming matters not proved, as suggesting inadmissible evidence from this witness upon any question which can possibly be at issue between the parties to this deposition, and as leading.)

Ans. I do not remember much about it, but it must have been signed here. I do not remember who wrote it. I signed it by the advice of my counsel. I do not remember much about it.

Int. 25. State whether or not you own certain shares of stock in certain banks and other corporations; and, if so, state the number of shares and in what companies or institutions?

Ans. There it is, all down on that paper copied from the certificates by Harriet Sprague (paper marked "Exhibit A, A. M. E.") and annexed thereto:

17 shares R. I. National Bank.
9 shares City Insurance Co.
17 shares Narragansett Fire & Marine Insurance Co.
1 share Liberty Bank.
150 shares Bank of Commerce.
50 shares Narragansett Brick Co.
660 10 shares Worcester railroad.
235 shares Globe National Bank.
11 shares Merchants' Insurance Co.

2 shares Bank of North America.
6 shares Atlantic Fire & Marine Insurance Co.
102 shares 2d National Bank.
9 shares High Street Bank.
14 shares Roger Williams Insurance Co.
6 shares Whatcheer Bank.
48 shares Equitable Insurance Co.
10 shares screw stock.
(Exhibit A, A. M. E.)

Int. 26. Have you any shares in the Mechanics' National Bank?
Ans. Yes; four shares.

Int. 27. State whether or not there are any dividends due and unpaid on any of the shares of stock above mentioned; and, if so, how many remain unpaid?

Ans. I have not had any dividends since three years ago next July. All remain unpaid since that time. I do not know but what Mr. Chafee took some. I put an injunction on and he could not get them.

Int. 28. State whether or not Mr. Chafee has ever made demand on you in writing to transfer any of these stocks to him?
Ans. He never has.

Cross-examination by Mr. DOUGLAS:

Cross-int. 29. Who first informed you of the substitution of Zachariah Chafee as trustee in the mortgage deed dated November 1st, 1873, signed by you, and when and where?

Ans. Harriet Sprague informed me at breakfast the next morning, December 2d, 1873.

Cross-int. 30. Did she inform you that the deeds with Mr. Chafee's name inserted had been sent to the record offices during the night?

661 Ans. I do not remember particularly about that.

Cross-int. 31. When were you first informed that the said deeds were on record?

Ans. I think that Mr. Gardner told me when he came over for me to sign that transfer.

Cross-int. 32. When were you informed that Messrs. Lockwood, Waterman, and Nightingale had decided to decline the trust?

Ans. I was not informed until the 2d of December, at the breakfast table; Harriet Sprague told me.

Cross-int. 33. Did she explain to you the reasons for the change from the three trustees to Mr. Chafee, and did you understand them?

Ans. I understood it that they wouldn't accept and they put in Zachariah Chafee.

Cross-int. 34. Who did you understand put in Mr. Chafee?

Ans. I don't remember; I didn't know anything about the change.

Cross-int. 35. When Mrs. Harriet Sprague told you about the change what did you do?

Ans. Well, I said, Is it possible that Zachariah Chafee is going to have the management of my property? I did not do anything.

Cross-int. 36. Were not the names of some other gentlemen mentioned or proposed first before Messrs. Lockwood, Waterman, and Nightingale?

Ans. I don't know anything about it.

Cross-int. 37. Don't you know that James Y. Smith, Henry Howard, and Rufus Waterman were suggested?

Ans. I never heard anything at all about it.

Cross-int. 38. Have you ever brought any suit or taken any proceedings to cancel the mortgage deed to Zechariah Chafee?

Ans. No.

662 Cross-int. 39. Was Mr. Henry A. Hidden present at any time when your counsel advised you to sign a trust deed or mortgage of your property, as you have stated above in your direct examination?

Ans. Not that I know of.

Cross-int. 40. Besides the stock you have enumerated as your property, did you own, on the first of November, 1873, the estate on the southeast corner of Hope and Benevolent streets, known as the Mary Sprague mansion estate?

Ans. Yes; I owned it.

Cross-int. 41. Have you been in possession of it ever since?

Ans. I have.

Cross-int. 42. Do you remember the time last summer when your homestead estate and the Fanny Sprague homestead estate, next east of this, were put up at auction?

Ans. Very well I do. I shall always remember that date.

Cross-int. 43. Were you in the house at the time of the sale?

Ans. I was.

Cross-int. 44. How long before that did you know that it was to be put up at auction?

Ans. About four weeks. It was advertised, I think, about four weeks.

Cross-int. 45. Were you not out upon the lawn or the terrace while the sale was going on?

Ans. I was in the house.

Cross-int. 46. Who occupies and has occupied the house with you from 1873 to the present time?

Ans. Harriet Sprague, widow of Byron Sprague, and two of her children—my grandchildren.

Cross-int. 47. Did you at any time take so much interest in the affairs of the A. & W. Sprague M'f'g Co. as to attend the meeting of the corporation?

Ans. No; I did not.

663 Cross-int. 48. Do you mean to say that you never attended any meeting of the A. & W. Sprague M'f'g Co. at any time from the time you became a stockholder to the present time?

Ans. I never did. I had 1,300 shares in the A. & W. Sprague M'f'g Co., and Amasa and William Sprague managed it for me.

Cross-int. 49. Did you give any one a power of attorney to represent your stock in the corporation meetings?

Ans. I never did.

Cross-int. 50. From the time, on the 2nd of December, 1873, when you learned from your counsel, Mr. Gardner, and your nephew, Mr. Amasa Sprague, that Mr. Chafee's name had been substituted in the trust mortgage deeds bearing date November 1, 1873, in the place of the three trustees whose names were originally printed in said deeds, and that the deeds with Mr. Chafee's name in them had been recorded, what public notice did you give, if any, that you had never assented to the delivery of these deeds to Mr. Chafee?

Ans. I never gave any.

Cross-examination by Mr. PARKHURST:

Cross-int. 51. In your answer to questions twenty-five and twenty-six you state that you own certain corporate stocks. State whether you did not, on or about the 9th day of March, 1874, transfer those shares of corporate stocks to Zechariah Chafee, trustee, under a conveyance from yourself and other parties, dated November 1, 1873, for the benefit of creditors, with the exception of ten shares of stock in the American Screw Company?

(Objected to by Mr. Patton upon the ground that there is better evidence if any such transfer has been made.)

Ans. Well, I did, as collateral security. He always told me that after the business was settled up he was going to give me back my stocks.

Cross-int. 52. As collateral security to what?

664 Ans. To save them, just as it was with the other property, so that it would not be attached.

Cross-int. 53. Did you not, on or about the 2d of June, 1879, give to W. A. Cranston a power of attorney "to sell, assign, and transfer unto Zechariah Chafee, in trust, ten (10) shares now standing in my name in the capital and joint stock of the American Screw Company," with full power to make and pass all necessary acts and instruments for the assignment and transfer thereof, and was not your signature to the said power of attorney witnessed by Harriet Sprague, before referred to in this deposition?

Ans. No; I never did.

Cross-int. 54. Do you still retain in your possession all the certificates for the various shares of stock referred to in your previous answers?

Ans. I do.

Redirect examination by Mr. PATTON:

Redirect Int. 55. In your answer to cross-interrogatory No. 51 you state that you did transfer the stock mentioned in that interrogatory to Zechariah Chafee as collateral security. Was not the transfer that you made simply an agreement to transfer when called for by him in writing? State what led you to make that agreement or transfer.

Ans. It was simply an agreement, and he was to call upon me for a transfer, and he never has. It was to save my stock from attach-

ment, the same as all the rest of my property. Mr. Thurston came here and told me I must transfer this over to Mr. Chafee to save it, and I should have the interest of it as long as there was any.

Redirect Int. 56. Did you believe, from what Mr. Gardner and Mr. Thurston told you that Mr. Chafee had been legally appointed trustee, and that it was necessary to make these transfers in order to protect your property from attachments, and did you rely upon their statements in making the same?

665 Ans. I did. They were my counsel and I did not think they would ask me to do anything that wasn't right.

Redirect Int. 57. Does not Mr. Chafee hold your certificate of stock in the American Screw Co., and what led you to make the transfer to him?

Ans. I expect he does. He rode up here to the gate one day, and I was sick, and he enquired for my certificate in the Screw Co. of Harriet, who went to the gate, and she came to me and asked me where it was, and I told her, and she gave it to him.

Recross-examination by Mr. DOUGLAS:

Recross-int. 58. On what pretence and by what right or in what capacity did Mr. Chafee ask for and receive your certificate?

Ans. Well, I can't say any more than that he asked for it.

Recross-int. 59. What claim did he have to ask you for your property any more than I would have to ask it?

Ans. Well, I don't think he had any right to ask me for my property. If I had not been sick I never would have let him had it.

MARY SPRAGUE.

Adjourned to 3 p. m., same day and place.

PROVIDENCE, *April* 25, 1884—3 p. m.

Present: Messrs. Patton, Parkhurst, Douglas, and Mrs. Harriet Sprague.

Deposition of Mrs. Harriet Sprague (*Duly Sworn*).

Int. 1. What is your name and where is your residence?

Ans. Harriet Sprague; No. 1 Young Orchard avenue, Providence, Rhode Island.

666 Int. 2. What relationship, if any, are you to Mrs. Mary Sprague?

Ans. She is mother to my husband.

Int. 3. Were you acquainted with Mrs. Fanny Sprague?

Ans. Very well, indeed.

Int. 4. Were you present at the house of Mrs. Fanny Sprague on the evening of November 28, 1873? If so, state who was present, the purpose of your being there; state everything that transpired there that night with reference to the Spragues executing a deed of their property?

Ans. I was there; went over with Mrs. Mary Sprague, B. F. Thurston, John A. Gardner, George Harris, F. W. Latham, T. A.

Doyle, Messrs. Geo. C. Nightingale, Rufus Waterman, and Amos D. Lockwood. Those I am sure of, and I think Charles Hart was present; Amasa and William Sprague, Mrs. Latham, Mrs. Doyle. I saw Henry Martin there when he took the acknowledgments of the signers of the deed. Mrs. Fanny and Mrs. Mary Sprague were there. There were others there, but I don't remember who they were. I went with Mrs. Sprague to accompany her by request. We went into the dining-room, where the papers were signed by Fanny, Mary, Amasa, and William Sprague. After they were signed we went into the parlor, and I saw Mrs. Fanny and Mary Sprague in conversation with three gentlemen named as trustees. After the conversation I came home with Mrs. Mary Sprague. It was very late—after midnight.

Int. 5. Did you see and were you present when Mr. Henry Martin took the acknowledgements of the parties who signed the deeds?

Ans. I was present and saw him.

Int. 6. State whether there was more than one deed executed to the gentlemen named; and, if so, about how many?

Ans. There was more than one if every one of the papers they signed were deeds. That I don't understand.

Int. 7. State, if you know, whether the gentlemen named as trustees accepted the deeds so executed?

667 Ans. They did not.

Int. 8. State whether you were present at the house of Mrs. Fanny Sprague on the evening of December 1st, 1873; and, if so, who was present and what was done there that evening.

Ans. I was there. The same individuals above mentioned were there, with the exception of William Sprague. I did not see Henry Martin there. I saw the lawyers in the dining-room at work and asked what they were doing. It was late and after Mr. Chafee had been appointed as a substitute for the three who declined. They told me they were substituting his name in place of the three trustees who had declined, also changing the date from the 28th of November to the 1st of December, 1873, and substituting the pronoun his for their whenever it appeared. I saw Mr. Chafee and shook hands with him in the hall when he first entered the house. I was there till after twelve o'clock that night. When I left they were preparing to send the deeds to be recorded. They were all very busy at work when I left them at the table in the dining-room.

Int. 9. Were the deeds they were changing and substituting the same deeds that had been executed by the Spragues on the 28th day of November, 1873?

Ans. They were.

Int. 10. Do I understand you to mean that Mrs. Mary Sprague was present with you on the evening of December 1, 1873, at the house of Mrs. Fanny Sprague?

Ans. She was not there.

Int. 11. State whether or not you saw any of the parties who had signed the deed of November 28th acknowledge the deed before Mr. Henry Martin on the evening of December 1, 1873.

Ans. I did not; I did not see Mr. Martin at all that night.

Int. 12. State whether or not Mrs. Fanny Sprague was present with the parties who were there; and, if so, how long she remained so present.

Ans. I did not see her down-stairs at all that night. I sat with her part of the evening in her lodging-room. Her two
668 daughters, Mrs. Latham and Mrs. Doyle, and Amasa's wife, my daughter, Mrs. Harriet B. Sprague, was [were] up there also. There was nothing for us to stay down-stairs for. We sat up with Mrs. Fanny until she was tired enough to go to bed.

Int. 13. What time did she retire, if you know?

Ans. Some time between 11 and 12 o'clock. I don't know the exact hour; it was late.

Int. 14. State whether or not she acknowledged the deeds or any of them which they were changing or substituting down-stairs before Henry Martin that night.

Ans. She did not. I saw no acknowledgment made by any one; did not see Henry Martin at all that night.

Int. 15. Can you state more particularly the hour when you left that house that night?

Ans. It was after twelve, but I don't know how much after.

Int. 16. Did you see Mrs. Mary Sprague that night after your return; if not, when did you next see her?

Ans. I did not see her that night. I met her at the breakfast table the next morning, the second of December.

Int. 17. Do you know of her sending for Mr. Chafee some days after this upon a matter as to which she wished to see him, and his coming here? And, if so, state the circumstances.

Ans. I do know that she sent for him to tell him that she had heard he intended to employ Lyman B. Frieze in the office of the A. & W. Sprague M'f'g Co. She was very much opposed to the arrangement, as he had already caused us a great deal of trouble, and we wanted no more of it and no more of his services. When Mr. Chafee came to the house I introduced her to him, as she had never met him.

Int. 18. Did Mrs. Mary Sprague know of what was intended to be done at the house of Mrs. Fanny Sprague on the evening of December 1, 1873, about appointing Mr. Chafee trustee?

Ans. She did not; neither did I until I went over there.

669 Int. 19. State whether or not you apprised her of the fact the next morning, as she has testified.

Ans. I did, with which she was greatly surprised, and thought and said she ought to have been consulted about the change in the trusteeship.

Cross-examination by Mr. DOUGLAS:

Cross-int. 20. You have said that on the evening of November 28, 1873, you saw several papers signed in the house of Mrs. Fanny Sprague, which you supposed to be deeds; also that on the evening of December 1, 1873, you saw people in the house of Mrs. Fanny Sprague altering the same deeds. How do you know that the deeds or papers you saw on those two evenings were the same?

Ans. Because I heard them all talking about them and knew they were from what was said. I heard them say it was easier to alter those than to draw up new ones. That was why I was sure of it. There wasn't time to draw up new ones and get them recorded in time to prevent attachments. That was thoroughly discussed before they commenced altering them.

Cross-int. 21. Who took part in this discussion?

Ans. Mr. Thurston, Mr. Gardner, Mr. George Harris, Latham, Doyle, Amasa, and I don't know who else.

Cross-int. 22. Was not Mr. James Tillinghast there?

Ans. I think he was, but I am not sure. Mr. Charles Hart was there.

Cross-int. 23. Were these deeds you have spoken of written or printed?

Ans. I don't know; I didn't look at them particularly to see what they were, not being directly interested. I didn't think it was necessary.

Cross-int. 24. Did you talk with Mrs. Fanny Sprague while you were in her room about what was going on down-stairs?

670 Ans. I did. I told her they were altering the deeds. I told her Mr. Chafee was down-stairs and they were going to substitute him in the place of the three gentlemen whom she supposed were to be her trustees.

Cross-int. 25. Will you please state from what data you now fix the time of the two visits to Mrs. Fanny Sprague's house that you have testified to?

Ans. One was on the 28th of November, 1873. I fix it because the deed shows for itself on the face of it. It was the 28th of November. I have seen the deed and heard them say that it was the correct date. The other date was the first of December. I have seen the deeds since they were altered and had the erasure pointed out to me. A line was drawn through the date, the 28th of November, and through each name of the three gentlemen and December 1st inserted, and the name of Zechariah Chafee inserted.

Cross-int. 26. Was there any other date in the deed not erased or altered?

Ans. I don't know of any.

Cross int. 27. Whereabouts in the deed does the altered date appear?

Ans. I don't know; I couldn't tell.

Cross-int. 28. When was this alteration in the deed pointed out to you, and by whom?

Ans. I don't know who pointed it out to me. It was brought up for Mrs. Fanny Sprague to see. She was quite anxious to see it. Either Amasa or George Harris brought it; I can't say which one. This was several years ago.

Cross-int. 29. What became of the deed after Mrs. Mary Sprague had seen it?

Ans. It was taken away by whoever brought it here and carried back to the office, I think, by George Harris.

Cross-int. 30. Was this after Mr. Chafee took charge of the office?

Ans. It was.

671 Cross-int. 31. Will you please state what was the object of your going over to Mrs. Fanny Sprague's on the evening of December 1, 1873?

Ans. I went over there by invitation. It was wholly unexpected by me to go there that night. Amasa and his wife drove in from Cranston, came in here and told me what was going to be done over there and wanted me to go with them, and I went.

Cross-int. 32. What time was it when Amasa and his wife called here?

Ans. I should think between seven and eight o'clock.

Cross-int. 33. What room did they see you in?

Ans. In this room. I think no one else was present.

Cross-int. 34. Did you tell Mrs. Mary Sprague that you were going out to be gone all the evening?

Ans. No; I said nothing to her about it.

Cross-int. 35. Was Mrs. Mary Sprague invited to go also?

Ans. No; she didn't know anything about it. She was seldom consulted about business matters.

Cross-int. 36. Will you state why it was important for you to go, rather than for her, when you had no personal interest in the property involved and she had?

Ans. It was not important — all for me to be there. I merely went by request of my daughter, Mrs. Amasa Sprague, who wanted me to be with her.

Redirect by Mr. PATTON:

Redirect Int. 37. Were you present when Mrs. Mary Sprague gave her deposition last summer, when gentlemen Baker and Webb were here?

Ans. I was not; I was out of the city.

HARRIET SPRAGUE.

Adjourned to Thursday, May 1, 1884, at 10 a. m., at the same place.

672 PROVIDENCE, *May* 1, 1884.

Present: Messrs. Patton, Parkhurst, Douglas, and Mrs. Harriet B. Sprague.

Deposition of Mrs. Harriet B. Sprague (*Sworn.*)

Int. 1. What is your name and where is your residence?

Ans. Harriet B. Sprague; my residence, at present, Coweset, town of Warwick; it was in Cranston from November 12, 1873, to April, 1881.

Int. 2. What relationship are you to Mrs. Harriet Sprague and Mrs. Mary Sprague?

Ans. Mrs. Harriet Sprague is my mother; Mrs. Mary Sprague is my grandmother.

Int. 3. Were you acquainted with Amos D. Lockwood, Rufus Waterman, and Geo. C. Nightingale in the fall of 1873?

Ans. Not the first two named gentlemen. Mr. Nightingale I have known since a child.

Int. 4. State whether or not you were present at the house of Mrs. Fanny Sprague on the evening of November 28th, 1873. And, if so, who was present and what was done?

Ans. I was there. The three trustees you have named were present, Mrs. Fanny Sprague, Mrs. Mary Sprague, Mrs. Harriet Sprague, Mr. Amasa Sprague, Mr. William Sprague, Mr. Thos. A. Doyle and wife, Mr. Frank W. Latham and wife, Mr. Benj. F. Thurston, Mr. Charles Hart, Mr. James Tillinghast, Mr. John A. Gardner, Mr. George Harris, and others I don't remember.

Int. 5 Was Mr. Henry Martin there?

Ans. I don't remember. I didn't see him.

Int. 6. Please state what was done.

Ans. The trust deed was drawn up and signed.

Int. 7. By whom was it signed?

673 Ans. Mrs. Fanny Sprague, Mrs. Mary Sprague, Amasa Sprague, William Sprague.

Int. 8. Where was it signed?

Ans. In the dining-room.

Int. 9. Were these parties that you have mentioned present in the dining-room when the deed was signed?

Ans. Most of them; I can't say all.

Int. 10. Do you know whether or not the deed was acknowledged by the parties whose signatures it bore?

Ans. I don't remember.

Int. 11. Do you know what was done with the deed after it was signed?

Ans. No, sir.

Int. 12. Did you have any conversation with any of the parties named as trustees in the deed that evening?

Ans. No conversation; simply introduced.

Int. 13. Did you know what time of evening Mrs. Mary Sprague went to the house of Mrs. Fanny Sprague that evening, and who, if any one, accompanied her there?

Ans. Mrs. Harriet Sprague was with her; the time I don't know.

Int. 14. State, if you know, how long the parties were present at the house of Mrs. Fanny Sprague that evening?

Ans. I didn't know the time.

Int. 15. Do you know whether or not the trustees named in the deed spoken of accepted the deed?

Ans. I think they did.

Int. 16. Are you positive about that?

Ans. No, sir.

Int. 17. State whether or not you were again present at the house of Mrs. Fanny Sprague on the evening of December 1, 1873; if so, state at what time you came there, who you came with, who was present, and what was done there that evening.

Ans. I was. Early in the evening I came with my husband,

Mr. Amasa Sprague. I was upstairs all the evening. I
674 can't tell you who was present. I saw nothing done, because I was not down-stairs.

Int. 18. Did you see any gentlemen in the house of Mrs. Fanny Sprague that evening?

Ans. Yes, sir; Mr. Latham, Mr. Doyle, Mr. Chafee, and others; I don't know who.

Int. 19. Did you see any ladies present that evening besides yourself? If so, state who they were.

Ans. Upstairs I saw Mrs. Fanny Sprague, Mrs. Latham, Mrs. Doyle, Mrs. Harriet Sprague.

Int. 20. Was Mrs. Mary Sprague present there?

Ans. No, sir.

Int. At any time that evening?

Ans. No, sir.

Int. 22. How long were you present yourself on that evening of December 1, 1873?

Ans. From early in the evening until between two and three o'clock in the morning of December 2d, I should judge.

Int. 23. Were you in the company of Mrs. Fanny Sprague during the whole or the greater part of that time? If so, state how long you were in her company.

Ans. All the time until she retired, about eleven o'clock.

Int. 24. Where were you after she retired?

Ans. I sat on the top of the stairs; Mrs. Latham with me.

Int. 25. Near her room?

Ans. Quite near.

Int. 26. State whether or not Mrs. Fanny Sprague signed any deed or deeds and acknowledged the same before Mr. Henry Martin and delivered the deed so signed to Mr. Zachariah Chafee that night.

Ans. No, sir; she did not.

Int. 27. Would you have known if she had done so, from your relations with her, that night?

Ans. Yes, sir.

Int. 28. State whether or not, when you came here on the evening of December 1st, Mrs. Harriet Sprague accompanied
675 you to the house of Mrs. Fanny Sprague; if so, state what the facts are in the matter.

(Objected to as leading and as assuming what has not been testified to by Mr. Douglas and Mr. Parkhurst.)

Ans. Yes, sir; she did. I came from Cranston with Mr. Sprague, stopped at my grandmother's house, and invited my mother to go in with me for company, as she often did.

Int. 29. Did you see Mrs. Mary Sprague that evening?

Ans. No, sir.

Int. 30. When you left the house of Mrs. Fanny Sprague where did you go?

Ans. I went to Pawtuxet, to Col. Wheeler's, town clerk of Cranston.

Int. 31. Did any one accompany you?

Ans. Mr. Amasa Sprague and the coachman.

Int. 32. What did you go for?

Ans. To get Mr. Wheeler to go to the town clerk's office to put the deeds on record.

Int. 33. What deeds?

Ans. The trust deeds.

Int. 34. Whom did you see at the house of Mrs. Fanny Sprague before starting for Mr. Wheeler's?

Ans. No one to speak to. I saw Mr. Chafee in the hall from the stairs. I don't remember any one else.

Int. 35. At about — time was this?

Ans I don't remember.

Cross-examination by Mr. DOUGLAS:

Cross-int. 36. Please state your age.

Ans. Twenty-eight last September.

Cross-int. 37. What day of the week was November 28, 1873?

Ans. I don't know.

Cross-int. 38. Was Mr. Zechariah Chafee present at Mrs. Fanny Sprague's house on the evening of November 28, 1873?

676 Ans. I think not.

Cross-int. 39. Did you know Mr. Henry Martin by sight?

Ans. No, sir.

Cross-int. 40. On the evening of December 1st, 1873, did you know what the object of the meeting at Mrs. Fanny Sprague's house was to be before you went there?

Ans. No, sir.

Cross-int. 41. Did Mr. Amasa Sprague come into your grandmother's house that evening with you?

Ans. Yes, sir.

Cross-int. 42. Did he not state to your mother in your presence what the object of the meeting at Mrs. Fanny Sprague's was?

Ans. No, sir.

Cross-int. 42. Did you not state to your mother at that time what the object of the meeting was?

Ans. I didn't know.

Cross-int. 44. On that evening, while you were upstairs, did any members of the family come to see Mrs. Fanny Sprague or you in her room?

Ans. All of them, up and down.

Cross-int. 45. Please state who, by name.

Ans. Mr. Amasa Sprague, Mr. Thos. Doyle and wife, Mr. F. W. Latham and wife, Mrs. Harriet Sprague.

Cross-int. 46. What was the conversation about between these parties, Mrs. Fanny Sprague, and yourself?

Ans. Mostly concerning her health. She was very delicate at that time.

Cross-int. 47. Was nothing said about the business which was then going on down-stairs?

Ans. I don't remember anything in particular.

Cross-int. 48. When did you first learn of the fact that the names of the trustees in the trust deed were being stricken out and the name of Zechariah Chafee substituted?

677 Ans. During the evening; I can't remember the hour.

Cross-int. 49. Do you remember whether it was Mr. Doyle or who it was that spoke of that fact in your hearing?

Ans. No, sir; I don't remember.

Cross-int. 50. Do you remember whether any person except the family came upstairs that evening?

Ans. I think not.

Cross-int. 51. Are you positive of that?

Ans. No; not positive.

Cross-int. 52. Did you ever see and examine the trust mortgage deeds after Mr. Chafee's name was inserted?

Ans. I have seen them; I never took the trouble to examine them.

Cross-int. 53. Where and when did you see them?

Ans. I don't recall the time or place.

Cross-int. 54. Was it in this house?

Ans. I think not.

Cross-int. 55. Please state how you fix the date, Nov. 28th, 1873, which you have testified to as the time when Mrs. Mary Sprague was present at Mrs. Fanny Sprague's house, and the date, Dec. 1, 1873, when you have testified you did not see her there?

Ans. The deeds show for themselves.

Cross-int. 56. How does that assist your memory if you have never examined them?

Ans. Both nights were stamped indelibly on my mind that I remember them.

Cross-int. 57. When did you first have occasion to recall these dates or when were they first mentioned to you after the times in question?

Ans. I was not likely to forget them; I don't remember either.

HARRIET B. SPRAGUE.

678 PROVIDENCE, RHODE ISLAND, *May 1st, A. D.* 1884.

I, Amasa M. Eaton, master in chancery, do hereby certify that upon the days and at the place noted in the annexed depositions I caused to come before me Mary Sprague, Harriet Sprague, and Harriet B. Sprague, who were then and there, respectively, duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories to be to them severally put; and they severally then gave the aforegoing answers as hereinbefore appears, which were by me reduced to writing in their presence and were carefully read to them by me and were afterwards subscribed by them in my presence. They were taken at the request of Andrew B. Patton, Esq., of counsel for said deponents, to be used in perpetual memory. I further certify that I am not interested in nor of counsel for nor the attorney of either party.

AMASA M. EATON.

679 EXHIBIT No. A 3.

STATE OF MAINE, } ss:
Kennebec, }

Supreme Judicial Court. In Equity.

EDWARDS MANUFACTURING COMPANY
vs.
WILLIAM SPRAGUE, Trustee of Almyra Doyle, *et al.*

and

ZECHARIAH CHAFEE, Trustee,
vs.
SAME.

Deposition of Francis W. Latham.

Interrogatories to be propounded (by the respondents in the above-entitled suits) to Francis W. Latham, of Brownsville, Texas.

Int. 1. Please state your name, age, and residence.

Int. 2. Please state where you resided in November and December, 1873.

Int. 3 Please state whether or not you were acquainted with Fanny Sprague, Mary Sprague, William Sprague, and Amasa Sprague, of Providence, R. I., in the year 1873.

Int. 4. Whether or not you were acquainted with Henry Martin.

Int. 5. Whether or not you witnessed the execution of trust or mortgage deeds, made on or about the 28th day of November, 1873, by the A. & W. Sprague Manufacturing Co., A. & W. Sprague, Fanny Sprague, William Sprague, Amasa Sprague, and Mary Sprague
680 to Rufus Waterman, Amos D. Lockwood, and Geo. C. Nightingale; and, if yes, please state where it occurred, at whose residence, the time, who were present, and all the circumstances attending it.

Int. 6. Please state whether you were present at the execution of such deeds and mortgages to Zechariah Chafee; and, if yes, state who were present, when and where it was, and all the circumstances connected with it.

Int. 7. Please state whether or not you have any knowledge of the alteration of any deeds so made; and, if yes, when, where, and by whom, and what was the alteration made. Please describe it in full.

Int. 8. Please state whether William Sprague was present when you witnessed the deeds, and whether you witnessed the deeds of said grantors at any more than one time in November or December, 1873.

WM. SPRAGUE,
By E. F. WEBB, *Attorney.*

A true copy.
Attest: A. C. OTIS, *Clerk.*

STATE OF MAINE, *Kennebec,* } ss:

Supreme Judicial Court. In Equity.

EDWARDS M'F'G COMPANY; WILLIAM SPRAGUE, Trustee, *et al.*; ZECHARIAH CHAFEE, Trustee,
vs.
SAME.

Cross-Interrogatories to be Propounded to Francis W. Latham, of Brownsville, Texas.

Cross-int. 1. Please name particularly each individual present Dec. 1, 1873, when the trust mortgage deeds were executed to Z. Chafee.

681 Cross-int. 2. If you say any alterations were made in any of said deeds, were they not all made at the meeting of Dec. 1, 1873, at which the persons named in your last answers were present?

Cross-int. 3. Were you requested to be at that meeting for the purpose of witnessing the execution of said trust deeds to Mr. Chafee? If yes, who requested you, and did you so witness them, and do they bear your personal signature as attesting witness?

BAKER, BAKER & CORNISH,
Complainant's Solicitors.

A true copy.
Attest: A. C. OTIS, *Clerk.*

Answers of Francis W. Latham to Interrogatories.

Int. 1. My name is Francis William Latham; my age is sixty-five next March; my residence is in Cameron county, Texas; my post office is Brownsville.

Int. 2. Providence, Rhode Island.

Int. 3. I was.

Int. 4. I knew him officially as a notary. I had done business with him.

Int. 5. I am under the impression that is the date. I am quite certain I never witnessed but one document from these parties, the Spragues, to these gentlemen: Rufus Waterman, Amos D. Lockwood, and George C. Nightingale. It was at the house of Mrs. Fanny Sprague, in the city of Providence, on the twenty-eighth day of November, 1873, in the evening, from seven to ten o'clock. There were present Mr. B. F. Thurston, Mr. John A. Gardner, Mr. James Tillinghast, and I am quite certain Mr. Charles Hart was, as counsel. There was also George Harris, Amasa Sprague, Thomas A. Doyle, Mrs. Mary Sprague, Mrs. Fanny Sprague, Harriet Sprague, William Sprague; the three trustees, Rufus Waterman, Amos D. Lockwood, and George C. Nightingale, and Henry Martin,

682 the notary. The deed was explained by counsel, and it was agreed to be signed, and it was signed and acknowledged

before Henry Martin, and I witnessed the signature. George Harris and Thomas A. Doyle also did. It was understood that the trustees were to accept the trust the next morning. I believe counsel took the document. After its execution William Sprague took the midnight train for Washington, D. C.

Int. 6. I was present in the house on the evening of December 1, 1873, when the alterations were made in the deed executed November 28, 1873. B. F. Thurston, John A. Gardner, James Tillinghast, Charles Hart, Thomas A. Doyle, George Harris and myself, Zechariah Chafee, were there. Mrs. Fanny Sprague was there in the early part of the evening with these parties, it being her own residence. Mr. Amasa Sprague was also present. Waterman, Lockwood, and Nightingale had refused to accept the trust. Harris and John A. Gardner, and likely others, were engaged that evening, December 1, 1873, from ten o'clock till nearly two o'clock next morning, making erasures, alterations, and scratching out names of Waterman, Lockwood, and Nightingale and substituting Zechariah Chafee, and dates of November 28 and changing to December 1, and such alterations as were necessary to changing the trust from Waterman, Lockwood, and Nightingale to Zechariah Chafee. Neither of the parties signed or acknowledged the deed that night in my presence or to my knowledge. I was not asked to witness any signatures and did not witness any. Mr. Henry Martin was at the house. He came there and immediately went upstairs, and I did not see him come down from there or know when he went away. He was not down in the room where the parties were altering the deeds that I saw. Mrs. Fanny Sprague retired that night at about ten o'clock. Mrs. Mary Sprague was not present. Amasa Sprague was the only one of the signers of the deed present. Everything was bustle and confusion to get the alterations made in so many deeds, it being desirable to have them recorded immediately, and in every
683 place where property was situated to prevent attachments. It was talked over by counsel that if the deeds were not on record next morning the property would be covered by attachments, Hopkins & Pomroy, of Providence, R. I., having threatened that afternoon to attach the next morning, and this must be done before attachments could be put on. Mr. Thurston stated, in relation to the alterations, that it would not make any difference; that the alterations would not vitiate the document; that there would be no controversy about the matter.

Int. 7. I have already answered in the answer to the sixth interrogatory.

Int. 8. William Sprague was present November 28, 1873, at the time of the execution of the deed to Waterman, Lockwood, and Nightingale, and I witnessed the signatures to that deed, but he was not present on the night of December 1, 1873. I never witnessed but one deed—that of November 28, 1873.

Answers of Francis W. Latham to Cross-Interrogations.

Cross-int. 1. B. F. Thurston, John A. Gardner, James Tillinghast,

Charles Hart, Thomas A. Doyle, George Harris, and myself, Zechariah Chafee, Mrs. Fanny Sprague, Amasa Sprague, and Henry Martin were present, as I have already stated in my answer to direct interrogatory 6th. Other than as I have stated, there was no deed executed that night.

Cross-int. 2. I have no knowledge of any alterations in the deed of November 28, 1873, except those made on the night of December 1, 1873.

Cross-int. 3. I was not requested to be present as a witness, and did not witness the deed that night. I witnessed the deed November 28, 1873, and never witnessed it at any other time, nor witnessed any other deed. I lived there with Mrs. Fanny Sprague at that time.

FRANCIS W. LATHAM.

A true copy of the deposition of Francis W. Latham, excepting the fees of the magistrate thereon.

Attest: A. C. OTIS,
Clerk Supreme Judiciary Court, Kennebec County, Me.

684 EXHIBIT A 4. (Filed October 24, 1884.)

STATE OF RHODE ISLAND, *Providence,* } *sc:*

Supreme Court. March Term.

QUIDNICK COMPANY *vs.* Z. CHAFEE *et al.* } Equity, No. 2233.

Master's Report.

To the honorable the justices of the supreme court:

The undersigned, Richard B. Comstock, appointed master in chancery, under the commission hereto annexed, "to hear and report to the court all the evidence in said cause," respectfully reports that, having been first engaged to the faithful and impartial discharge of his duties, as is shown by the magistrate's certificate on said commission, he notified the parties of the time and place of meeting, as is shown by the notification, with the endorsements thereon, hereto annexed, and at said meeting and the agreed adjournments thereof heard and reduced to writing the evidence of all the witnesses produced by the parties, the witnesses having been first sworn to testify the truth, the whole truth, and nothing but the truth, and said evidence so heard and reduced to writing, with the exhibits called for in said evidence, under the names of the respective witness- testifying to the same, together with such notes as to your master seemed proper, is hereunto annexed as the evidence in said cause and made a part of this report.

And on receiving notification from the solicitors of the parties in said cause that they desired to submit no further evidence the evidence was closed and the commission is returned executed.

RICHARD B. COMSTOCK,
Master in Chancery under Special Commission.

685 Office of A. & W. Sprague M'f'g Co., Z. Chafee, trustee, &c., 5 Washington street.

Deposition of Zechariah Chafee (Sworn).

MAY 9, 1884—12 m.

Examined by Mr. C. FRANK PARKHURST, of counsel for Zechariah Chafee, trustee and assignee:

Int. 1. What is your name, age, residence, and occupation?

Ans. Zechariah Chafee; age, sixty-nine; residence, city of Providence; occupation, trustee of the Sprague estate.

Int. 2. Do you know the corporation known as the Quidnick Company, the complainant in this suit? How long have you known such corporation? Have you been any officer of said corporation; and, if so, between what dates?

Ans. I do. I have known such corporation for eleven years. I have been an officer of such corporation, its treasurer; December, 1873, to August, 1881.

Int. 3. As such officer during that time, were you familiar with the property of the Quidnick Company?

Ans. Yes.

Int. 4. Since August, 1881, and prior to thirteenth (13) of March, 1884, has said Quidnick Company sold out all its property and converted the same into money and discontinued the business of manufacturing?

Ans. Yes.

Int. 5. State whether or not the dividend referred to in the bill and in your answer in this cause is a stock dividend in liquidation and is payable out of the funds of the Quidnick Company derived from said sales of its property?

Ans. It is.

Int. 5½. You have said in your first answer that you are the trustee of the Sprague estate. Please state under what instrument you became such trustee. Produce the same and allow the magistrate to identify the same, in order that the same may be produced in court at the hearing of this cause.

686 Ans. Under the Sprague trust mortgage dated the first day of November, 1873, executed and delivered to me on the first day of December. I here produce it.

(The said instrument was here produced, shown to the magistrate, and by him marked "Equity No. 2233, Z. Chafee, Exhibit A," for identification by him in court.)

Int. 6. Did you afterwards receive from the A. & W. Sprague Manufacturing Co., the firm of A. & W. Sprague, Amasa Sprague, and William Sprague, deeds of assignment of all their property and estate, dated the sixth (6th) day of April, A. D. 1874? If so, please produce them and allow the magistrate to identify the same, in order that they may be produced in court at the hearing of this cause.

Ans. I did, and I here produce them.

(The four deeds of assignment were here produced, shown to the magistrate, and by him marked, respectively, "Equity No. 2233, Z. Chafee, Exhibits B, C, D, E," for identification in court.)

Int. 7. Have you in your possession a general power of attorney of William Sprague to Amasa Sprague bearing date the twenty-second (22d) day of July, A. D. 1859? If so, please produce the same and allow the magistrate to annex a copy of the same to your deposition as a part thereof.

Ans. I have, and here produce it.

(Power of attorney produced and marked "Equity No. 2233, Z. Chafee, Exhibit F," and copy thereof annexed thereto and marked "Equity No. 2233, Z. Chafee, Exhibit F.")

Int. 7½. Please state whether the said power of attorney has the signature of said William Sprague, whether you are familiar with the handwriting of said William Sprague, and whether the said signature is the genuine signature of said William Sprague.

Ans. It has. I am familiar with the handwriting of said William Sprague, and the said signature is the genuine signature of said William Sprague.

687 Int. 8. State before whom the said power of attorney appears to be acknowledged and by whom the said signature appears to be witnessed.

Ans. It appears to be acknowledged before Henry Martin, public notary, and witnessed by Henry Martin and Dexter Thurber.

Int. 9. State whether you are familiar with the handwriting of the said Henry Martin, and whether the said signatures of the said Henry Martin are his genuine signatures.

Ans. I am familiar with the handwriting of said Henry Martin, and I believe the signatures to be genuine.

Int. 10. State whether the said Henry Martin and Dexter Thurber are living or dead.

Ans. Dead.

Ins. 11. Were the A. & W. Sprague Manufacturing Company, Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague, stockholders in the said Quidnick Company at the time of the execution of the said trust mortgage deed of November first, A. D. 1873?

Ans. They were.

Int. 12. To what extent?

Ans. They were to the extent of four thousand and twenty-two shares (4,022).

Int. 13. State whether or not, under the provisions of the said trust mortgage deed, you did, on or about the second (2d) day of December, 1873, call upon said Spragues to execute transfers of their said stock in the said Quidnick Company to you, and whether or not they did execute said transfers in accordance with the provisions of said trust mortgage deed.

Ans. I did call upon them on about the second (2d) day of December, A. D. 1873, to make such transfers, and they did make them.

Int. 14. What was the position of William Sprague in the said Quidnick Company on the second day of December, A. D. 1873, and how long did he occupy said position from that date?

688 Ans. He was president of the company at that time, and continued to be president until Stephen Harris was elected, in September, A. D. 1883.

Int. 15. Whether as president of and stockholder in said Quidnick Company said William Sprague had access to the books of said Quidnick Company, and whether and how soon after said second of December, A. D. 1873, he did, to your knowledge, examine said stock transfer book of said Quidnick Company.

Ans. He always had access to the books as long as I was treasurer, and he did examine the stock transfer book on or about the eighth day of December, A. D. 1873. I remember of his coming home on Sunday morning from Washington, and he was in the office Monday, the eighth of December, A. D. 1873, looking over what had been done.

Int. 16. What amount and number of creditors came in under the trust mortgage deed of November first, A. D. 1873, and accepted the trust mortgage note secured thereby?

Ans. Four hundred and forty-nine creditors, to the amount of eight million seven hundred and seventeen thousand four hundred and fifty dollars.

Int. 17. Have the grantors fulfilled the conditions of said trust mortgage deed; if not, to what extent have they fulfilled them, and how far have they failed to fulfill them?

Ans. There has been paid on the mortgage note two years' interest, to the first of January, 1876, and ten per cent. on the principal only, which was paid by me as trustee February, 1883. These payments were made to all holders of notes who call for it.

Int. 18. Will all the estate, real and personal, which passed under said trust mortgage deed be sufficient to pay the debts secured by said trust mortgage?

Ans. It will not.

Int. 19. Whether or not you have already sold a large portion of said property.

Ans. I have; most of the real estate in Rhode Island and the principal part of that in Maine.

689 Int. 20. Whether or not the proceeds thereof, together with what can possibly be derived from the remaining portion of said estate, will be sufficient for the payment of the said debts.

Ans. It will not.

Int. 21. Whether or not the whole of any and all sums of money that are now or may hereafter become distributable upon or in respect of said 4,022 shares of stock of said Quidnick Co. will be required to pay the said debts and will still leave a deficiency for the full payment of said debts.

Ans. It certainly will be required, and there will still be a deficiency.

Int. 22. State, if you know, where the said power of attorney, William Sprague to Amasa Sprague, which you have produced, was

found; whether the same was and always has been among the other general miscellaneous papers relating to the general business carried on by the A. & W. Sprague M'f'g Co. and by Amasa and William Sprague, either individually or as copartners or as related to the various corporations in which they and the A. & W. Sprague M'fg Co. were interested.

Ans. It was found in the safe among that class of papers, and it has always been kept with the same class of general papers referred to above.

MASTER'S NOTE.—This deposition was left open and unsigned for further questions and cross-examination.

Cross-examination of Zechariah Chafee.

Examined by CHARLES H. PARKHURST, solicitor for Gorham P. Pomroy, assignee (May 7, 1884):

Cross-int. 23. Did you know of the execution of assignments upon the stock transfer book of the Quidnick Company made by Amasa Sprague, Fanny Sprague, Mary Sprague, William Sprague, and the A. & W. Sprague M'f'g Co. of their respective shares of the capital stock in said company in the month of December, A. D. 1873,
690 in trust for the equal benefit of their respective creditors; if so, about when did you first learn of the same?

Ans. I did know of said transfers at the date of the same.

Cross-int. 24. Are those transfers the same referred to by Charles B. Gould in his testimony as transfers Nos. 30, 31, 32, 33, and 34?

Ans. They are.

Cross-int. 25. Were you also aware of the proceedings in the supreme court of this State which resulted in the removal of Fanny Sprague as assignee of Amasa Sprague, Mary Sprague, William Sprague, and the A. & W. Sprague M'f'g Co. of their respective shares of said stock, and also in the removal of Mary Sprague as assignee of said Fanny Sprague of said Fanny's shares of said stock and the appointment of the respondent, Gorham P. Pomroy, in their places?

Ans. I was.

ZECHARIAH CHAFEE.

Signed in the presence of Richard B. Comstock, master, this 17th day of May, A. D. 1884.

MASTER'S NOTE.—The above deposition, except the cross-examination, was taken at the first meeting, May 9, 1884, but was left open for cross-examination, which was taken May 17, A. D. 1884, and deposition signed.

691 EXHIBIT F.

Equity No. 2233. Z. Chafee.

(Called for in question 7.)

A true copy. Attest: R. B. Comstock, master.

Know all men by these presents I, Wm. Sprague, of the city and county of Providence, in the State of Rhode Island, have constituted, ordained, and made and in my stead and place put, and by these presents do constitute, ordain, and make and in my stead and place put, Amasa Sprague, of Cranston, in said county and State, to be my true, sufficient, and lawful attorney, for me and in my name and stead to ask, demand, and receive of and from any person or persons, firms, and corporations any and all sums of money that may be due, owing, or payable to me, holding the net amount thereof subject to my order and for my use; to draw checks; to sign notes; to draw drafts; to endorse any check, note, and draft; to sign, seal, and as and for my act and deed to acknowledge and deliver any lease, deed, contracts, and obligations, and generally in all things to attend to, do, and perform all my individual business; also for me and in my name, as a member of the firm of A. & W. Sprague, and also for me and in my name, either as a member or officer of and in the corporation known as the "A. & W. Sprague Manufacturing Company," to sign, seal, and as and for my act and deed to acknowledge and deliver any deed, lease, bond, or other paper, hereby giving and hereby granting unto my said attorney full power and authority in and about the premises; and to use all due means, course, and process in the law for the full, effectual, and complete execution of the business aforedescribed; and in my name to make and execute due acquittance and discharge; and for the premises to appear and the person of me, the constituent, to represent before any Governor, judges, justices, officers, and ministers of the law whatsoever in any court or courts of judicature, and there, on my behalf, to answer, defend, and reply unto all actions, causes, matters,
and things whatsoever relating to the premises; also to submit
692 any matter in dispute respecting the premises to arbitration or otherwise, with full power to make and substitute for the purposes aforesaid one or more attorneys under my said attorney and the same again at pleasure to revoke, and generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises as fully, amply, and effectually to all intents and purposes as I, the said constituent, if present, ought or might personally, although the matter should require more special authority than is herein comprised, I, the said constituent, ratifying, allowing, and holding firm and valid all and whatsoever my said attorney or his substitutes shall lawfully do or cause to be done in and about the premises by virtue of these presents.

In witness whereof I have hereunto set my hand and seal this

22d day of July, in the year of our Lord one thousand eight hundred and fifty-nine (1859).

[L. S.] WM. SPRAGUE.

Signed, sealed, and delivered in the presence of us—
HENRY MARTIN.
DEXTER THURBER.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *County of Providence*, } *ss:*

Be it known — in the city of Providence, in the county and State aforesaid, on the 25th day of July, A. D. 1859, before me, Henry Martin, a public notary for said county of Providence, personally appeared Wm. Sprague and acknowledged the within letter of attorney by him signed to be his free act and deed for the uses and purposes therein expressed.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, at said city of Providence, the day and year above written.

HENRY MARTIN,
Public Notary.

[Seal of Henry Martin, Notary Public.]

(Written on the back as follows:) Power of attorney. Wm. Sprague to Amasa Sprague.

A true copy.
Attest: RICHARD B. COMSTOCK, *Master.*

693 *Deposition of Charles B. Gould (Sworn).*

Examined by C. FRANK PARKHURST, of counsel for Z. Chafee, trustee and assignee:

Int. 1. What is your name, age, residence, and occupation?

Ans. Charles B. Gould; age, thirty-eight; reside in Providence; I am secretary and treasurer of the Quidnick Co.

Int. 2. Have you in your custody the books of the Quidnick Company, including the stock ledger and stock transfer book of said company: if so, will you please state whether the A. — W. Sprague Manufacturing Company, Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague were stockholders in said Quidnick Company on and prior to the first day of December, A. D. 1873; and, if such stockholders, the number of shares held by each, respectively?

Ans. I have in my custody the stock ledger, stock transfer, and record books of said company. The parties named were stockholders on and prior to said first day of December, A. D. 1873, owning the respective number of shares as follows, to wit:

The A. — W. Sprague M'f'g Co.	455
Amasa Sprague	1,082
William Sprague	1,082
Fanny Sprague	802
Mary Sprague	601

Int. 3. Please state the whole number of outstanding shares of stock of said Quidnick Company on the fifteenth day of March, A. D. 1884, the time of the filing of the bill in this cause.

Ans. Forty-three hundred and forty-nine shares, three hundred and twenty-seven shares, being the balance over and above the four thousand and twenty-two as above mentioned, being held by the estate of Edwin Hoyt, late of New York, deceased.

694 Int. 4. Please produce the stock transfer book of said Quidnick Company and state whether you find therein any transfers to Zechariah Chafee; if so, state the numbers of said transfers, the names of the parties transferring, the number of shares transferred by each, and the date of each of said transfers.

Ans. I here produce the book and do find transfers to said Zechariah Chafee as follows:

Transfer No. 18.

Fanny Sprague to Zechariah Chafee, 802 shares, dated December 2, 1873.

Transfer No. 19.

Mary Sprague to Zechariah Chafee, 601 shares, dated December 2, 1873.

Transfer No. 20.

Amasa Sprague to Zechariah Chafee, 1,082 shares, date- Dec. 2, 1873.

Transfer No. 21.

William Sprague to Zechariah Chafee, 1,082 shares, date- Dec. 2, 1873.

Transfer No. 22.

A. & W. Sprague M'f'g Co. to Zechariah Chafee, 455 shares, date- Dec. 2, 1873.

Int. 5. Please state by whom said transfers were signed, whether you are familiar with the handwriting of each of the signers thereof, whether the said signatures are the genuine signatures of the signers thereof.

Ans. Transfer No. 18—by Fanny Sprague.
Transfer No. 19—by Mary Sprague.
Transfer No. 20—by Amasa Sprague.
Transfer No. 21—by William Sprague, by Amasa Sprague, his attorney.
Transfer No. 22—by A. & W. Sprague M'f'g Co., by Amasa Sprague, treasurer.

695 I am familiar with the handwriting of each of the signers thereto, except that of Fanny and Mary Sprague. The signatures of the signers of Nos. 20, 21, and 22 are genuine.

Int. 6. Please allow the magistrate to annex to this deposition and make a part thereto [thereof] copies of said transfers Nos. 18 and 22, inclusive.

Ans. I will do so.

(The copies called for in the above question are hereto annexed and marked "Equity No. 2233, Charles B. Gould, Exhibits 1 to 5, inclusive.")

Int. 7. Whether or not you find on said transfer book any transfers to Mary and Fanny Sprague from A. & W. Sprague M'f'g Co., Amasa Sprague, William Sprague, Mary Sprague, and Fanny Sprague. If so, state the numbers of said transfers, the names of the parties transferring, the number of shares transferred by each, and the date of each of said transfers.

Ans. I do.

Transfer No. 30.

Fanny Sprague to Mary Sprague, 802 shares; date, December 22, 1873.

Transfer No. 31.

Mary Sprague to Fanny Sprague, 601 shares; date, December 22, 1873.

Transfer No. 32.

Amasa Sprague to Fanny Sprague, 1,082 shares; date, December 22, 1873.

Transfer No. 33.

A. & W. Sprague M'f'g Co. to Fanny Sprague, 445 shares; date, December 22, 1873.

Transfer No. 34.

William Sprague to Fanny Sprague, 1,082 shares; date, December 24, 1873.

696 Int. 8. Please state by whom said transfers were signed; whether you are familiar with the handwriting of each of the signers thereof; whether the said signatures are the genuine signatures of the signers thereof.

Ans. Transfer No. 30—signed by Fanny Sprague.
Transfer No. 31—signed by Mary Sprague.
Transfer No. 32—signed by Amasa Sprague.
Transfer No. 33—signed by A. &. W. Sprague M'f'g Co., by Amasa Sprague, treasurer.
Transfer No. 34—signed by William Sprague.

I am familiar with the handwriting of each of the signers thereof except that of Fanny Sprague and Mary Sprague. The signatures of the signers of transfers Nos. 32, 33, and 34 are genuine.

Int. 9. Please allow the magistrate to annex to this deposition and make a part thereof copies of said transfers Nos. 30 to 34, inclusive.

Ans. I will do so.

(The copies called for in the above question are hereto annexed and marked "Equity No. 2233, Charles B. Gould, Exhibits 6 to 10, inclusive.")

Int. 10. Please examine the power of attorney marked "Equity No. 2233, Z. Chafee, Exhibit F," and state whether you are familiar with the handwriting of William Sprague, and whether the signature to the said power of attorney is the signature of William Sprague.

Ans. I have examined the said power of attorney and am familiar with the handwriting of William Sprague, and the said signature is the signature of William Sprague, and is in his handwriting.

Int. 11. State whether you were at any time in the employ of A. & W. Sprague M'f'g Co.; if so, between what dates and in what capacity.

Ans. I was, between 1867 and 1882, in the capacity of clerk; cashier from 1869, I think. After the failure in November,
697 1873, I remained in the employ of the A. & W. Sprague M'f'g Co.

Int. 12. Were you, as such cashier, familiar with the general business of the office?

Ans. I was.

Int. 13. Was Amasa Sprague treasurer of the A. & W. Sprague M'f'g Co., acting as such during those years?

Ans. He was.

Int. 14. State, if you know, whether said Amasa Sprague commonly acted as the attorney for William Sprague during the absence of William Sprague from the city of Providence, and whether said William Sprague was frequently and for considerable periods absent from the city of Providence.

Ans. William Sprague was frequently absent from the city of Providence. I know of Amasa Sprague acting as the attorney of William Sprague.

Int. 15. State whether or not it was generally understood in the office of the A. & W. Sprague M'f'g Co. that Amasa Sprague had a general power of attorney to act for William Sprague in the absence of William Sprague.

Ans. I couldn't say.

Int. 16. Have you a draft drawn by J. M. Haines, treasurer of the Kennebec Land & Lumber Company, for three thousand one hundred and sixty-six dollars and fifty-six cents ($3,166.56) upon Hon. William Sprague, dated April 4th, 1871, which bears the following acceptance on its face: "Providence, April 10 | 71. Accepted, payable at the Globe N. Bank. Wm. Sprague, by his att'y, Amasa Sprague?" If so, state in whose handwriting are the words quoted above, and whether the acceptance of the said draft was made while you were cashier, as above stated.

Ans. I have the draft above referred to. The words above quoted, except the words "Amasa Sprague," are in my handwriting; the words "Amasa Sprague" are in the handwriting of Amasa Sprague. The acceptance of said draft was made while I was cashier, as above stated.

698 Int. 17. Have you a note dated January 29th, 1870, for five thousand dollars, payable four months after date to the order of William Sprague, at Globe National Bank, Providence, R. I., signed "William Sprague, by his attorney, Amasa Sprague," en-

dorsed "William Sprague, by his attorney, Amasa Sprague?" Please state in whose handwriting the body of said note is filled and in whose handwriting the signature and endorsement thereof, and whether the words Amasa Sprague are in the genuine handwriting of Amasa Sprague.

Ans. I have the note referred to above; the body of said note is filled in my own handwriting; the handwriting of the signature and endorsement, "William Sprague, by his attorney," is in different handwriting; the words "Amasa Sprague" in the signature and endorsement are in the handwriting of Amasa Sprague.

Int. 18. Does said note appear to have been negotiated and paid?

Ans. It does.

Int. 19. Please allow the magistrate to annex copies of said draft and note and make the same part of your deposition.

Ans. I will do so.

(The copies called for above are hereto annexed and marked "Equity No. 2233, Charles B. Gould, Exhibits 11 and 12.")

Int. 20. How long have you been treasurer of the Quidnick Company?

Ans. Since September first, A. D. 1883.

Int. 21. Has the Quidnick Company, during that time and prior to the thirteenth day of March, 1884, sold all its real estate and manufacturing property and given up its business of mnufacturing preparatory to liquidation and winding up its affairs and to dividing out the proceeds of such sales and all its other property among the stockholders?

Ans. It has.

Int. 22. Was the dividend declared by said company as alleged in the bill in this cause a stock dividend in liquidation
699 and is the same payable out of funds derived from said sales of property?

Ans. It was, and is so payable.

Int. 23. What number and amount of creditors accepted the trust mortgage notes under said trust mortgage deed of November 1st, 1873, referred to in the deposition of Z. Chafee?

Ans. Four hundred and forty-nine creditors, to the amount of eight million seven hundred and seventeen thousand four hundred and fifty dollars.

Adjourned to May 17th, 1884, 10 a. m., at same place, office of A. & W. Sprague M'f'g Co., Z. Chafee, trustee and assignee.

CHARLES B. GOULD.

Signed in the presence of Richard B. Comstock, master, this 19th day of May, A. D. 1884.

MASTER'S NOTE.—The above deposition of Charles B. Gould was taken at the first meeting, May 9th, A. D. 1884, but was left opened and unsigned for cross-examination, and was finally signed at meeting on date above indicated, Charles H. Parkhurst, Esq., not desiring to ask any questions in cross-examination.

Transfers 18, 19, 20, 21, 22, 30, 31, 32, 33, and 34, annexed to the testimony of Charles B. Gould as Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, are omitted by agreement, as the same are annexed to the defendant's answer as Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

EXHIBIT 11.

Equity, No. 2233. C. B. Gould.

(Called for in question 19.)

$5,000. PROVIDENCE, *January* 29, 1870.

Four months after date I promise to pay to the order of
700 Wm. Sprague five thousand dollars, at Globe National Bank, Providence, R. I., value received.

WILLIAM SPRAGUE,
By his attorney, AMASA SPRAGUE.

No. —. Due June 1.

On the face of the note is stamped as follows: "Paid Merchants' National Bank, Providence, R. I."

On the back of the note is the following: "No. 3650. William Sprague, by his attorney, Amasa Sprague."

A true copy.
Attest: RICHARD B. COMSTOCK, *Master.*

EXHIBIT 12.

Equity, No. 2233. C. B. Gould.

(Called for in question 19.)

$3,166.56. AUGUSTA, *April* 4, 1871.

Four months after date pay to the order of Kennebec Land & Lumber Co. three thousand one hundred sixty-six $\frac{56}{100}$ dollars, value received, and charge the same to account of—

J. M. HAYNES,
Tr. K. L. L. Co.

To Hon. William Sprague, Providence, R. I.

No. 335. August 4–7.

On the back of the note is the following: J. M. Haynes, tr. K. L. L. Co. Pay to the order of John Carr, Esq., cash., for collection. J. Boothby, cashier. For collection, pay to the order of J. Luther, cash. John Carr, cash. M. L. Williams, teller.

A true copy.

RICHARD B. COMSTOCK, *Master.*

701 *Deposition of Theophilus Salisbury (Sworn).*

Examined by C. FRANK PARKHURST, Esq., of counsel for Z. Chafee, assignee and trustee:

Int. 1. What is your name, age, residence, and occupation?

Ans. Theophilus Salisbury; age, seventy years; Providence, R. I.; cashier of Globe National Bank.

Int. 2. How long have you been connected with said bank, and in what capacities?

Ans. I have been connected with said bank since 1836; as clerk from 1836 to 1858, and from that time, 1858, to the present as cashier.

Int. 3. Do you know Amasa Sprague and William Sprague? And, if so, state whether they occupy any positions in said bank and what positions, and for how long.

Ans. I do. Amasa Sprague was a director from 1865 up to a short time after the suspension of the Sprague. William Sprague was president of the bank under the State organization, and after its reorganization as a national bank in 1865 was president until a short time after the suspension of the Sprague.

Int. 4. State whether the A. & W. Sprague M'f'g Co. and other corporations kindred thereto, under the management of Amasa and William Sprague, did business at and through your bank to any extent during the years that Amasa and William occupied the positions above mentioned.

Ans. They did to a considerable extent. It was their principal deposit bank.

Int. 5. State whether or not Amasa Sprague, in the absence of William Sprague, the president, acted generally as the representative of the said William Sprague, both in his said capacity as president and in his individual capacity.

Ans. He did.

702 Int. 6. State whether or not, in the absence of said William Sprague, said Amasa Sprague was in the habit of signing and endorsing notes and accepting drafts and doing other financial acts as the attorney of the said William Sprague, and give any instances of the same that occur to your memory or appear from the records of your bank, with the dates thereof.

Ans. Amasa Sprague was in the habit of signing and endorsing notes and accepting drafts as the attorney of said William Sprague, and also doing other financial acts as the attorney of William.

The note referred to in the testimony of Charles B. Gould, dated Jan. 29, 1870, — the draft referred to in the testimony of Charles B. Gould dated April 4th, 1871, are instances of paper signed by or accepted by William Sprague, by his attorney, Amasa Sprague, and said two pieces of paper passed through our bank and were duly paid on presentation.

We find on our records a note of the Batter Gold Mining Co., running from 1865 till February 27. 1874, that, in the absence of William Sprague, Amasa Sprague, as attorney of William, was in the habit of endorsing the renewals thereof (which was once in six months) "William Sprague, by his attorney, Amasa Sprague."

At the organization of the Globe National Bank it was necessary for all the stockholders to sign the organization papers, authorizing the directors to change and convert said bank into a national banking association. I find by reference to the book containing such

signatures that William Sprague, as the holder of twenty shares of stock in the old bank, signed as follows: "William Sprague, by Amasa Sprague, his att'y."

Int. 7. During the years above referred to, from 1865 till after the suspension of the Spragues, whether or not it was generally understood, both in your bank and generally in the business community, that Amasa Sprague had authority under a general power of attorney to act as the attorney of William Sprague in his absence for any and all business purposes.

Ans. Yes, sir; it was understood.

703 MASTER'S NOTE.—Charles H. Parkhurst, solicitor for Gorham P. Pomroy, assignee, did not desire to ask any questions in cross-examination.

THEOPHILUS SALISBURY.

Signed in the presence of Richard B. Comstock, master, this 17th day of May, A. D. 1884.

WILLIAM W. PAYNE (sworn).

Examined by C. FRANK PARKHURST, Esq., of counsel for Z. Chafee, trustee and assignee:

Int. 1. What is your name, age, residence, and occupation?

Ans. William W. Paine; fifty years old; residence, Providence, R. I.; am cashier of Second National Bank of Providence, R. I.

Int. 2. How long have you been such cashier?

Ans. About sixteen or seventeen years.

Int. 3. Do you know Amasa and William Sprague, and have you ever been in their employ? If so, state when.

Ans. Yes, sir; have been in their employ, 1850 to 1863.

Int. 4. Whether at any time during that period you knew of any authority possessed by Amasa Sprague to act as the attorney for William Sprague in his absence; and, if you knew it, state how and when.

Ans. Mr. Amasa Sprague told me in 1859 that he had a power of attorney to represent his brother, William Sprague, during his, William Sprague's, absence in Europe.

Int. 5. Whether from that time, during your continuance in the office of A. & W. Sprague, it was understood that Amasa Sprague had general authority to act as the attorney of William Sprague.

Ans. While I was in their employ I never heard anything more about it.

Int. 6. Have you the custody of the records and original papers of said Second Nat. Bank? If so, will you state, from
704 any examination of the same you have made, whether or not Amasa Sprague did, at various times, represent William Sprague as his attorney? Give the instances and dates, if any.

Ans. I have the custody of records and original papers of Second National Bank. Amasa Sprague, at various times, did represent William Sprague as his (William's) attorney. I find by the records

that on the third of October, 1864, certain gentlemen met in the banking-rooms of the Globe National Bank, in Providence, for the purpose of organizing the Second National Bank; that a subscription to five hundred shares of the stock of Second National Bank was made by William Sprague, by his attorney, Amasa Sprague; that the articles of association of said bank were signed by William Sprague, by his attorney, Amasa Sprague, and that the organization certificate was signed by William Sprague, by his attorney, Amasa Sprague. It also appears by the record book of said Second National Bank that upon the first meeting of the directors for organization the oath of office was administered to William Sprague, as represented by his attorney, Amasa Sprague, and sworn to by William Sprague, by his attorney, Amasa Sprague. From my recollection I will state that Amasa Sprague was in the habit of signing and endorsing notes as the attorney of William Sprague.

Int. 7. During the years you have been connected with the Second National Bank, till after the suspension of the Spragues, whether or not it was generally understood, both in your bank and generally in the business community, that Amasa Sprague had authority under a general power of attorney to act as the attorney of William Sprague in his absence for any and all business purposes.

Ans. It was his habit to endorse notes for William Sprague, when William Sprague was absent, as the attorney of William. On one occasion I asked C. S. Sweetland, one of Sprague's clerks, when he presented a note endorsed "William Sprague, by his attorney, Amasa Sprague," if such document was all right, and he said, "Yes."

705 Int. 8. Whether or not William Sprague and Amasa Sprague held any offices in your bank; if so, during what period, and whether or not they were stockholders in your bank from its organization till after their failure.

Ans. They were both stockholders and directors from the organization of the bank till the time of their failure. William Sprague was president from the organization of the bank till January 10, 1865.

MASTER'S NOTE.—Charles H. Parkhurst, Esq., solicitor for Gorham P. Pomroy, assignor, desired to ask no question in cross-examination.

WILLIAM W. PAINE.

Signed in presence of Richard B. Comstock, master, this 17th day of May, A. D. 1884.

Cornelius S. Sweetland (Sworn).

Examined by C. FRANK PARKHURST, Esq., of counsel for Z. Chafee, trustee and assignee:

Int. 1. What is your name, age, residence, and occupation?

Ans. Cornelius S. Sweetland; thirty-eight years of age; Providence, R. I.; president of Jackson Bank, Providence, R. I.

Int. 2. Whether or not you were at any time in the employ of

Amasa & William Sprague or of any of the corporations which were under their management; if so, state for what periods, giving dates and what corporations.

Ans. Yes; from December, 1868, to after their suspension in 1873 I was in the employ of the A. & W. Sprague M'f'g Co., in their city office, where I kept books of the R. I. Horse Shoe Co., Perkins Sheet Iron Co., Comstock Foundry Co., Wilcox Caloric and Steam Engine Co., Union Horse Shoe Works, and, after organization, the books of the Sprague Mowing Machine Co.; and I also kept the ac-
706 counts of William Sprague, guardian. This continued till the fall of 1871, when I was sent to the office of the iron works, on Sprague street, and remained there till after the suspension.

Int. 3. Whether or not it was the custom, during the years above referred to, for Amasa Sprague to act as the attorney of William Sprague, in the absence of the said William Sprague, in the making and endorsing of any commercial paper made by any of the above-named corporations which required the signature or endorsement of William Sprague, and generally in the conduct of any of the business carried on by any of the said corporations.

Ans. I was. I remember particularly in the case of the Wilcox Caloric and Steam Engine Co., when William Sprague was president and Amasa Sprague signed for him as attorney. William Sprague gave me specific instructions to consult Mr. Amasa Sprague in his absence in regard to all matters of business respecting the above-named corporation. Amasa Sprague also told me that he had authority from William Sprague to act for him. I remember of asking Mr. Charles Greene, who was chief of the office, as to Mr. Amasa Sprague's power and authority to act in this way, and he stated that Amasa Sprague had the requisite power.

MASTER'S NOTE.—Charles H. Parkhurst, Esq., solicitor for Gorham P. Pomroy, assignee, desired to ask no question in cross-examination.

CORNELIUS S. SWEETLAND.

Signed in presence of Richard B. Comstock, master, this 17th day of May, A. D. 1884.

Charles Greene (Sworn).

Examined by C. FRANK PARKHURST, Esq., solicitor for Z. Chafee, trustee and assignee:

Int. 1. What is your name, age, residence, and occupation?

Ans. Charles Greene; forty-five years of age in September; Providence, R. I.; book-keeper.

707 Int. 2. Whether or not you were at any time in the employ of Amasa & William Sprague, A. & W. Sprague M'f'g Co., Quidnick Co.; if so, between what dates and in what capacity.

Ans. Yes; from August, 1863, to December, 1873; as book-keeper for the first four or five years, I think; after that as chief clerk and general charge of the city office.

Int. 3. Whether or not it was the custom during the years referred

to for Amasa Sprague to act as the attorney of William Sprague in the making and endorsing of any commercial paper which required the signature or endorsement of William Sprague and generally in the conduct of any of the business carried on in the said office?

Ans. It was. I had general instructions while chief clerk and in charge of office to look to Amasa Sprague for all that was necessary to be done in the general conduct of the business in the absence of William.

Int. 4. Was William Sprague absent during those years; if so, for what periods of time, stating generally and where?

Ans. The only particular cases that I can recall now is when he was away by reason of his duties as Senator and when he was sick at Narragansett Pier by reason of accident, and, I think, he went to Europe. He was away for considerable periods of time.

Int. 5. Please examine the note referred to, dated Jan. 29, 1870, in the deposition of Charles B. Gould, and state in whose handwriting the words "William Sprague, by his attorney," in the signature and endorsement thereof, are, and whether you are familiar with the handwriting of Amasa Sprague, and whether or not the words "Amasa Sprague" are in the handwriting of the said Amasa Sprague.

Ans. I have examined the note referred to, and the words "William Sprague, by his attorney," in the signature and endorsement, are in my handwriting. I am familiar with the handwriting of Amasa Sprague, and the words "Amasa Sprague" were written by him.

708 Int. 6. Whether or not it was generally understood at the office of the Spragues and among the kindred corporations controlled by the Spragues and among the banks with which the various Sprague corporations did business that Amasa Sprague had a general power of attorney to act for William Sprague in the absence of the latter.

Ans. To the best of my recollection, I never saw a power of attorney. The only knowledge I have concerning it was received from Amasa Sprague, to the effect that it was all right. How general the understanding may have been among the various corporations I am now unable to say, only that I imparted the knowledge I had concerning the power whenever occasion arose.

MASTER'S NOTE.—Charles H. Parkhurst, Esq., solicitor for Gorham P. Pomroy, assignee, desired to ask no question in cross-examination.

CHARLES GREENE.

Signed in presence of Richard B. Comstock, master, this 17th day of May, A. D. 1884.

Adjourned to Monday, May 19th, 1884, 10 a. m., same place.

RICHARD B. COMSTOCK, *Master.*

CLARENCE H. GUILD, being sworn, in answer to the following questions by C. FRANK PARKHURST, one of the solicitors for Zechariah Chafee, trustee and assignee, testified as follows:

Int. 1. What is your name, age, and residence?

Ans. Clarence H. Guild; 37 years of age; Providence, R. I.

Int. 2. Are you secretary of the A. & W. Sprague M'f'g Co.; and, if so, how long have — been such, and have you the corporate records of said company in your possession or control; and, if so, will you produce them?

709 Ans. I am and have been secretary of the A. & W. Sprague M'f'g Co. since February 12th, 1876. I have the corporate records and I now produce them.

Int. 3. State when the A. & W. Sprague M'f'g Co. was organized, the number of shares of the capital stock issued by the company, and who were the stockholders of said stock October 31st, 1873.

Ans. Organized July 15th, 1865. Ten thousand shares of the capital stock were issued by the company. The holders of said shares were:

Mary Sprague	1,341	shares.
Fanny Sprague	1,553	"
Amasa Sprague	2,526	"
William Sprague	2,526	"
Sarah Hoyt	389	"
Susan S. Hoyt, Wm. Sprague, guardian	440	"
Edwin Hoyt, Jr., Wm. Sprague, guardian	439	"
William S. Hoyt, Wm. Sprague, guardian	439	"
A. & W. Sprague M'f'g Co.	347	"
	10,000	

Int. 4. Were the stockholders above referred to the same at the time of the holding of the corporate meetings of the dates of Oct. 31st, 1873; Nov. 28th, Dec. 1st, Dec. 8th, 9th, 12th, 18th, 20th, 22d, 23d, 24th, 26th, 1873, and of the meeting of April 6th, 1874, and did the parties hold the same amount of stock at these times?

Ans. They were, and they held the same amount of stock to Dec. 22d, 1873, when William Sprague, Amasa Sprague, Mary Sprague, and the A. & W. Sprague M'f'g Co., respectively, transferred their stock to Fanny Sprague, and on the same date Fanny Sprague transferred to Mary Sprague the stock formerly held by the said Fanny Sprague, as shown in the answer to the previous question, said transfers to said Mary and Fanny Sprague being for the benefit of creditors of the transferrers.

Int. 5. Have you in your possession any proxies or letters
710 of attorney given by either of the stockholders of this company to Amasa Sprague or any other person to vote or represent parties—stockholders—at either of the corporate meetings held at the time specified in question fourth above; if so, will you produce them and annex copies of them to this deposition?

Ans. I have, and will annex copies to this deposition.

(Copies called for annexed to this deposition, each marked "Equity No. 2233, Clarence H. Guild Exhibits," and numbered 1 to 7, inclusive.)

Int. 6. Have you among your papers any request to the secretary to call the meetings and copies of calls for the meetings referred to in question fourth (4th) above; if so, will you produce all such requests and calls or letter-press copies of the same and annex copies of the same to this deposition as a part thereof?

Ans. I have, and will annex copies.

(Copies called for in above question are annexed to this deposition and each marked "Equity No. 2233, Clarence H. Guild Exhibits," and numbered 8 to 28, inclusive.)

Int. 7. Will you annex a copy of the records of corporate meetings of the said company, commencing with the record of the meeting of October 31, 1873, and including all the record of the corporate meetings held between that date and the 6th day of April, 1874, including the record of the corporate meeting of April 6, 1874, and also copy of the by-laws of said company and a copy of the act of incorporation of said company?

Ans. I will.

(The copies of the corporate meetings called for in above question are annexed to this deposition, marked "Equity No. 2233, Clarence H. Guild Exhibit 29." The by-laws of the said company called for in above question are hereto annexed, marked "Equity No. 2233, Clarence H. Guild Exhibit No. 30." The act of incorporation called for in above question is hereto annexed, marked "Equity No. 2233, Clarence H. Guild Exhibit 31.")

711 Int. 8. Who was president and treasurer of the said company from its organization to April 6, 1874?

Ans. William Sprague was president and Amasa Sprague was treasurer of said company from its organization up to October 31, 1873, and from October 31, 1873, Amasa Sprague was president and treasurer.

Int. 9. Will you produce and annex copies of all papers in your possession relating to the call or holding of any of the meetings of the said corporation referred to in question four above?

Ans. I will.

Int. 10. Please examine the power of attorney, William Sprague to Amasa Sprague, a copy of which is appended to the deposition of Zechariah Chafee in this cause, marked "Equity No. 2233, Z. Chafee Exhibit F," and state whether you are familiar with the handwriting of William Sprague, the signer thereof, and with the handwriting of Henry Martin, before whom the acknowledgment thereof appears to have been taken and who witnessed the signature thereof; and, if you are so familiar, state whether the signatures of the said William Sprague and the said Henry Martin are the genuine signatures of the parties, respectively.

Ans. I have examined the paper referred to, and I am familiar

with the handwriting of William Sprague and Henry Martin, and the signatures on the said paper are genuine.

Int. 11. Please examine the transfers of stock, numbers 18 to 22, inclusive, referred to in the deposition of Charles B. Gould, and state whether you are familiar with the handwriting of the several signers thereof, and state whether or not the signatures to the same are the genuine signatures of the several transfers therein.

Ans. I have examined said transfers, and am familiar with the handwriting of said signers, and the signatures are all genuine. On transfer No. 21 the signature "William Sprague, by Amasa Sprague, his att'y," is all in the handwriting of Amasa
712 Sprague. On transfer No. 22 the signature "A. & W. Sprague M'f'g Co., by Amasa Sprague, treas.," is all in the handwriting of Amasa Sprague and is the customary signature of the said corporation.

Cross-examination by CHARLES H. PARKHURST, Esq., solicitor for Gorham P. Pomroy, assignee:

Int. 12. Please examine the transfers of stock, numbers 30 to 34, inclusive, referred to in the deposition of Charles B. Gould in this cause, and state whether you are familiar with the handwriting of the several signers thereof, and state whether or not the signatures to the same are the genuine signatures of the several transferrers therein.

Ans. I have examined the said transfers, and am familiar with the handwriting of the said signers, and the signatures are all genuine. On transfer No. 33 the signature "A. & W. Sprague M'f'g Co., by Amasa Sprague, tr.," is all in the handwriting of Amasa Sprague, and is the customary signature of the said corporation.

CLARENCE H. GUILD.

Signed in the presence of Richard B. Comstock, master, the 19th day of May, A. D. 1884.

Exhibits 1 to 31, inclusive, annexed to the deposition of Clarence H. Guild, are omitted by agreement, either party reserving the right to use the same at the hearing.

PROVIDENCE, *sc.*:

Supreme Court. March Term, 1884.

QUIDNICK COMPANY
vs.
Z. CHAFEE, Trustee, *et al.* } Equity, 2233.

It is agreed that the respondent, Gorham P. Pomroy, assignee, may use at the hearing of the cause the several miscellaneous petitions filed in said court at the March term, 1883, and num-
713 bered 1877 to 1881, both inclusive, and 1888 to 1892, both inclusive, and the several orders and decrees therein, and that the respondent, Zechariah Chafee, trustee, etc., may also use at

the hearing the original papers in the case, Second National Bank *vs.* The Wilcox Steam and Caloric Engine Company, in which judgment was rendered at the March term, 1878, of said court, in said county, being case No. 427; also any of the notes of the Baltic Gold Mining Company referred to in the deposition of Theophilus Salisbury, with the same effect as if the same had been produced before the master and formally put in evidence in said cause.

C. H. PARKHURST,
Solicitor for G. P. Pomroy, Assignee.
C. FRANK PARKHURST,
Solicitor for Z. Chafee, Trustee, etc.

Providence, May 17, 1884.

The master is informed by Charles H. Parkhurst, Esq., solicitor for Gorham P. Pomroy, assignee, and by C. Frank Parkhurst, Esq., solicitor for Z. Chafee, trustee and assignee, that no further evidence is to be submitted, and the evidence is herewith closed.

RICHARD B. COMSTOCK, *Master.*

Providence, May 19th, 1884.

714 Circuit Court of the United States, District of Rhode Island.

EVAN RANDOLPH *v.* QUIDNICK CO. *et als.* } Equity, No. 2059.

Stipulation as to Use of Printed Proofs in Certain Cases. (*Filed Oct.* 13, 1884.)

In the above-entitled cause it is hereby stipulated and agreed that the copy of the printed proofs heretofore taken and used in the case of Francis D. Moulton *vs.* Zechariah Chafee *et al.*, in equity, No. 2030, in the United States circuit court, district of Rhode Island, as well as the copy of the depositions of Mary Sprague, Harriet Sprague, and Harriet B. Sprague, heretofore taken in perpetual memory by Amasa M. Eaton, master in chancery, appointed by the supreme court of Rhode Island, for the county of Providence, taken on the 16th day of April, A. D. 1884, and filed and opened in said court on the 3d day of May, A. D. 1884, and the copy of the deposition of Francis W. Latham, heretofore taken in the matter of Edwards Manufacturing Company *vs.* William Sprague, trustee, and Zechariah Chafee, trustee, *vs.* The Same, in the supreme judicial court, county of Kennebec, in the State of Maine, and the copy of the depositions of Zechariah Chafee, Charles B. Gould, Theophilus Salisbury, William W. Paine, Cornelius Sweetland, Charles Greene, and Clarence H. Guild, heretofore taken in the suit in equity, No. 2233, in the supreme court of Rhode
715 Island, for the county of Providence, March term, A. D. 1884, before Richard B. Comstock, master in chancery, and filed in said court May 22d, 1884, may be used as evidence in the trial of this cause in the same manner as though the depositions

contained in the printed proofs in said first above-mentioned cause of Moulton *vs.* Chafee *et al.* and depositions thereafter above mentioned had been regularly taken in this case in the usual manner. The copy of the printed proofs taken in the said cause of Moulton *vs.* Chafee *et al.*, hereinbefore mentioned, is marked "Exhibit A 1;" the copy of the depositions of Mary, Harriet, and Harriet B. Sprague is marked "Exhibit A 2;" the copy of the deposition of Francis W. Latham is marked "Exhibit A 3," and the copy of the depositions of Zechariah Chafee *et als.* is marked "Exhibit A 4." All of said copies are identified by our signatures, subject to all exceptions and objections made by the plaintiffs and defendants and appearing therein and subject to all the objections which may be made by the complainant and respondents in this cause in the trial thereof; either party in this cause to have the right to examine as witnesses in this cause any of the persons whose depositions are included in either of said exhibits.

WILLIAM H. BAKER,
Solicitor for Evan Randolph.
CHARLES H. PARKHURST,
Solicitor for the Respondents, The Quidnick Company, The Union Company, Stephen Harris, Charles B. Gould, C. B. Farnsworth, Benj. B. Knight, Robert Knight, Gorham P. Pomroy.
C. FRANK PARKHURST,
Solicitor for Z. Chafee, Respondent.

Providence, October 11, 1884.

716 *Final Decree. Entered June 8th,* 1886.

EVAN RANDOLPH
v.
QUIDNICK COMPANY *et al.*

The above-entitled cause came on to be heard on bill, answers and proofs at the November term, A. D. 1885, of this court, and was argued by counsel for the respective parties; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed—

That the said bill of complaint be, and the same is hereby, dismissed out of this court, and that the several respondents have and recover their several costs from the said complainant, to be taxed by the clerk and paid to the solicitors of record of the said respondents.

Entered as the decree of this court, per order thereof, this 8th day of June, A. D. 1886.

HENRY PITMAN, *Clerk.*

Claim of Appeal. Filed June 8th, 1886.

The complainant, in open court, this eighth day of June, 1886, claims an appeal, and hereby gives notice thereof, from the decree of the above-named court dismissing said bill to the Supreme Court of the United States.

By his solicitor, ARTHUR PAYNE.

717 *Appeal Bond. Filed Aug't 5th*, 1886.

Know all men by these presents that we, Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, as principal, and William C. Clarke, of Wakefield, Washington county, in the State of Rhode Island, are held and firmly bound unto Stephen Harris, Charles B. Gould, The Union Company, Benjamin B. Knight, and Robert Knight, copartners and doing business under the firm name of B. B. & R. Knight, all of the city and county of Providence; Claudius B. Farnsworth, of Pawtucket, in the county of Providence; Gorham P. Pomroy, The Quidnick Company, The A. & W. Sprague Manufacturing Company, of the city and county of Providence; William Sprague, of South Kingston, Washington county; Amasa Sprague, of Warwick, Kent county; William Sprague, administrator of the estate of Fanny Sprague; the estate of Mary Sprague, no administrator as yet having been appointed on said estate; Zechariah Chafee, of the city and county of Providence, and all of the State of Rhode Island, in the full and just sum of two hundred and fifty dollars ($250); to which payment, well and
718 truly to be made, Evan Randolph binds himself, his heirs, executors, and administrators, jointly and severally, with the said William C. Clarke, hereinbefore named as surety in this bond, who binds himself, his heirs, executors, and administrators, jointly and severally, with the said Evan Randolph, hereinbefore named as principal in this bond, his heirs, executors, and administrators, firmly by these presents.

Sealed with the seal of the said Evan Randolph and the said William C. Clarke and dated the thirty-first day of July, A. D. 1886.

Whereas at a circuit court of the United States holden at Providence, within and for the district of Rhode Island, on the ninth day of June, A. D. 1886, in a suit in equity depending in said court, wherein Evan Randolph was complainant and Quidnick Company and others were respondents, a decree was rendered against said Evan Randolph dismissing the bill of complaint in said cause for the sum of one hundred and forty dollars, respondents' costs of suit, and said Evan Randolph has appealed in open court from said decree to the Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the second Monday in October, A. D. 1886:

719 Now, the condition of the above obligation is such that if the said Evan Randolph shall prosecute said appeal with effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and effect.

EVAN RANDOLPH. [L. S.]
WILLIAM C. CLARKE. [L. S.]

Executed in presents [presence] of—
(By Evan Randolph:)
CHAS. WEST.

By William C. Clarke:
A. B. PATTON.

Approved.

LE BARON B. COLT,
Cir. Judge.

UNITED STATES OF AMERICA, *District of Rhode Island,* } ss:

CLERK'S OFFICE, U. S. CIRCUIT COURT,
AT PROVIDENCE, *October 9th*, 1886.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the foregoing three hundred & fifty-five pages contained in volume 1 and three hundred & sixty-three pages contained in volume 2 are a true transcrip- of record, Evan Randolph *vs.* Quidnick Company *et al.*, and of all of the proceedings therein.

Seal Circuit Court, District of Rhode Island.

In testimony whereof I have hereunto set the seal of said court and my hand on the day and year above written.

HENRY PITMAN, *Clerk.*

Endorsed on cover: Rhode Island C. C. U. S. No. 213. John S. Jencks, William H. Jencks, and Charles Rhoades, executors of Evan Randolph, deceased, appellants, *vs.* The Quidnick Company, Gorham P. Pomroy, assignee, &c.; Zechariah Chafee, trustee and assignee of the A. & W. Sprague Manufacturing Company *et al.* Filed October 18, 1886.

THE UNITED STATES OF AMERICA, ss:

Seal of the Supreme Court of the United States.

The President of the United States to the judges of the circuit court of the United States for the district of Rhode Island, Greeting:

Whereas in a certain suit in said circuit court between Evan Randolph, complainant, and The Quidnick Company *et al.*, defendants, which suit was removed to the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, diminutions of the record and proceedings of said cause have been suggested, to wit:

"That the transcript of the record, after setting forth, on pages 28 to 44, certain pleas pleaded by said appellees, said Quidnick —, said Gorham P. Pomroy, and said Zechariah Chafee, omits to set forth the fact that said cause was heard on the bill and said pleas on the eighth day of February, A. D. 1884, and that on the first day of May, A. D. 1884, a decree was entered overruling said pleas, and omits to set forth the said decree.

That said copies of original documents forming a part of the record of this suit in the circuit court of the United States for the district of Rhode Island have been omitted from the transcript of said record heretofore certified to this Court, as follows, to wit: Copy of the subpœna to answer the original bill of complaint, issued on the 2d day of August, 1883, and of the return thereon, showing that said subpœna was duly served on the 3d day of August, 1883, on all the defendants to said original bill of complaint.

Copy of the subpœna to answer the first supplemental bill of complaint, issued on the 31st day of August, 1883, and of the return thereof, showing that said subpœna was duly served on all the defendants to said supplemental bill of complaint on the 31st day of August, 1883.

Copy of interlocutory decree overruling defendants' pleas, entered on the first day of May, 1884.

Copy of *subpœna duces tecum*, issued on the 8th day of February, 1884, requiring the clerk of the supreme court of Rhode Island to produce in said circuit court the original papers in the suits in equity, Nos. 1932, 2075, and 2161, in said State court and copy of the return thereon, showing that said papers were produced in said circuit court on said 8th day of February, 1884.

And also all other parts of said record omitted from said transcript."

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, the 29th day of January, A. D. 1890.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

RHODE ISLAND DISTRICT, *sc:*

[L. S.] The President of the United States of America to The Quidnick Company, a corporation duly created by the General Assembly of the State of Rhode Island and located and doing business in said State of Rhode Island, a citizen of said State of Rhode Island; The A. & W. Sprague Manufacturing Company, a corporation duly created by the General Assembly of said State of Rhode Island and located and doing business in said State of Rhode Island, a citizen of said State of Rhode Island; William Sprague, of the town of South Kingston, in the county of Washington and State of Rhode Island, a citizen of said State of Rhode Island; Amasa Sprague, of the town of Cranston, in the county of Providence and State of Rhode Island, a citizen of said State of Rhode Island; Fanny Sprague, of the city and county of Providence, in said State of Rhode Island, a citizen of said State of Rhode Island; Mary Sprague, of said city and county of Providence, in said State of Rhode Island, a citizen of said State of Rhode Island, and Zechariah Chafee, of said city and county of Providence, in said State of Rhode Island, a citizen of said State of Rhode Island, Greeting:

For certain causes offered to our circuit court for the first circuit within and for the Rhode Island district, in chancery, we hereby command and strictly enjoin you and each of you that, laying aside all other matters and things and notwithstanding any other excuse, you and each of you personally appear at the clerk's office of said court, in Providence, on Monday, the — day of —— next, being the rule day of said court, and then and there full, true, and perfect answer make upon your several corporal oaths to the bill of complaint of Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, a citizen of the State of Pennsylvania, now filed of record in the clerk's office of said court, and to do and receive whatever our said court shall order against you in the premises in this behalf; and hereof fail not under the pains and penalties that may accrue in consequence of neglect thereof.

And the marshal of said Rhode Island district or his deputy is hereby commanded to make service of this writ by reading the same to the said Quidnick Co., A. & W. Sprague Man'f'g Co., William Sprague, Amasa Sprague, Fanny Sprague, Mary Sprague, and Zechariah Chafee or by leaving a true and attested copy hereof at their several last and usual places of abode twenty days before the rule day aforesaid.

Witness the Hon. Morrison R. Waite, our Chief Justice, at Providence, this second day of August, A. D. 1883.

HENRY PITMAN, *Clerk.*

MEMO.—The appearance of the respondents in the suit is to be entered in the clerk's office on or before the return day of this writ; otherwise the bill may be taken *pro confesso* as against those not appearing.

Marshal's Return.

DISTRICT OF RHODE ISLAND, *sc:*

PROVIDENCE, *August 3rd*, 1883.

I have this day served the within subpœna on the Quidnick Company by delivering a true and attested copy hereof to William Sprague, president of said defendant corporation. I also served the same on William Sprague individually by delivering to him a like true and attested copy. I also this day served the within subpœna on the A. & W. Sprague Manufacturing Company by leaving a true and attested copy of this subpœna at the last and usual place of abode of Amasa Sprague, treasurer of said defendant corporation, in the town of Warwick. I also, at the same time and in the same mode and manner, served the same on Amasa Sprague, within named, individually. I also this day served the within on Fanny Sprague, Mary Sprague, and Zechariah Chafee, defendants within named, by leaving a true and attested copy of the within at the last and usual place of abode of the said respective defendants in the city of Providence.

JAMES H. COGGESHALL,
U. S. Marshal.

Fees:	
7 services	$14 00
7 copies	7 00
Travel	75
	$21 75

RHODE ISLAND DISTRICT, *sc:*

[L. S.] The President of the United States of America to Gorham P. Pomroy, of the city and county of Providence, in the State of Rhode Island; The Quidnick Company, a corporation duly created by the General Assembly of the State of Rhode Island and located and doing business in said State of Rhode Island; The A. & W. Sprague Manufacturing Company, a corporation duly created by the General Assembly of the State of Rhode Island and located and doing business in said State of Rhode Island; William Sprague, in the town of South Kingston, in the county of Washington and State of Rhode Island; Amasa Sprague, of the town of Cranston, in the county of Providence and State of Rhode Island; Fanny Sprague, of the city and county of Providence, in said State of Rhode Island; Mary Sprague, of the city and county of Providence, in said State of Rhode Island, and Zechariah Chafee, of the city and county of Providence, in said State of Rhode Island, all citizens of said State of Rhode Island, Greeting:

For certain causes offered to our circuit court for the first circuit

within and for the Rhode Island district, in chancery, we hereby command and strictly enjoin you and each of you that, laying aside all other matters and things and notwithstanding any other excuse, you and each of you personally appear at the clerk's office of said court, in Providence, on Monday, the first day of October next, being the rule day of said court, and then and there full, true, and perfect answer make upon your several corporal oaths to the amended and supplemental bill of complaint of Evan Randolph, of the city and county of Philadelphia, in the State of Pennsylvania, a citizen of said State of Pennsylvania, now filed of record in the clerk's office of said court, and to do and receive whatever our said court shall order against you in the premises in this behalf; and hereof fail not under the pains and penalties that may accrue in consequence of neglect thereof.

And the marshal of said Rhode Island district or his deputy is hereby commanded to make service of this writ by reading the same to the said Gorham P. Pomroy, The Quidnick Co., The A. & W. Sprague Man'f'g Co., William Sprague, Amasa Sprague, Fanny Sprague, Mary Sprague, and Zechariah Chafee, or by leaving a true and attested copy hereof at their several last and usual places of abode twenty days before the rule day aforesaid.

Witness the Hon. Morrison R. Waite, our Chief Justice, at Providence, this 31st day of August, A. D. 1883.

HENRY PITMAN, *Clerk.*

MEMO.—The appearance of the respondents in the suit is to be entered in the clerk's office on or before the return day of this writ; otherwise the bill may be taken *pro confesso* as against those not appearing.

Marshal's Return.

RHODE ISLAND DISTRICT, *sc:*

PROVIDENCE, *August* 31*st*, 1883.

I this day served this writ as follows:

On Gorham P. Pomroy by delivering personally to him a true and attested copy hereof; on The Quidnick Company by personally delivering a true and attested copy hereof to William Sprague, president of said defendant corporation; on the A. & W. Sprague Manufacturing Company by personally delivering a true and attested copy hereof to Amasa Sprague, the treasurer of said defendant corporation; on William Sprague and Amasa Sprague individually by delivering to each personally a true and attested copy hereof, and on Fanny Sprague, Mary Sprague, and Zechariah Chafee, by delivering personally at the last and usual place of abode of each a true and attested copy of this writ.

JAMES H. COGGESHALL,
U. S. Marshal.

Fees:

8 services	$16 00
8 copies	8 00
Travel	1 00
	$25 00

PROVIDENCE, *sc:*

Circuit Court of the United States, District of Rhode Island.

EVAN RANDOLPH *vs.* QUIDNICK COMPANY *et als.* } Equity, No. 2059.

Decree Overruling Defendants' Pleas.

This cause, coming on to be heard, was argued by counsel, and thereupon, on consideration thereof, it was ordered, adjudged, and decreed that the defendants' pleas be, and the same are hereby, overruled.

By the court:

HENRY PITMAN,
Clerk U. S. Circuit Court.

May 1st, 1884.

EVAN RANDOLPH *vs.* QUIDNICK COMPANY *et al.* } # 2059.

UNITED STATES OF AMERICA, *District of Rhode Island,* } *sc:*

Circuit Court of the United States. November Term, 1883.

[L. S.] To the clerk of the supreme court of the State of Rhode Island within and for the county of Providence, Greeting:

We command you that, laying aside all other business, you be and appear before our said court, now holden at Providence, in said district, on this 8th day of February, 1884, and have with you the original papers in the suits in equity Nos. 1932, 2075, and 2161, now on file in your office; and have you there this writ.

Hereof fail not.

Witness the Hon. Morrison R. Waite, our Chief Justice, at Providence, in said district, this 8th day of February, 1884.

HENRY PITMAN,
Clerk Circuit Court.

PROVIDENCE, *sc:*

PROVIDENCE, *February 8th*, 1884.

I have here the above-named papers, as above commanded, and have received my fee, $1.60.

HERBERT ALMY,
Assistant Clerk.

UNITED STATES OF AMERICA, }
District of Rhode Island, } *sc:*

CLERK'S OFFICE U. S. CIRCUIT COURT,
AT PROVIDENCE, *January 31st*, 1890.

In pursuance to the command contained in the foregoing writ I do make return thereof and annex hereto true copies from the originals of the subpœna issued on the 2nd day of August, 1883, upon the original bill of complaint of Evan Randolph *vs.* Quidnick Company *et al.*, with the marshal's return of service thereon; of the subpœna issued in the first supplemental bill in said cause on the 31st day of August, 1883, with the marshal's return of service thereon; of the interlocutory decree overruling defendant's pleas, entered May 1st, 1883, in said cause; of the *subpœna duces tecum*, issued in said cause on the 8th day of February, 1884, to the clerk of the supreme court of Rhode Island, with his return thereon.

In testimony whereof I have hereunto set the seal of said court and my hand on the day and year above written.

[Seal of Circuit Court, Rhode Island.]

HENRY PITMAN,
Clerk U. S. Circuit Court.

Fees, $2.50

[Endorsed:] Supreme Court U. S. 1889, October term. No. 213. Jno. S. Jencks *et al.*, app'ts, *vs.* The Quidnick Co. & *al.* Writ of certiorari and return.

[Stamped:] Office Supreme Court U.S. Filed Feb. 5, 1890. James H. McKenney, clerk.

Supreme Court of the United States. October Term, 1889.

JOHN S. JENCKS *et al.*, Ex'rs of Evan Randolph, Appellants,
vs.
THE QUIDNICK COMPANY *et als.*
No. 213.

Stipulation.

It is stipulated and agreed between the parties to the above-entitled cause—

That whereas in sending up the transcript of the record in said cause the clerk of the circuit court of the United States omitted to annex to and transmit with the record a copy of the opinion of said court filed in said cause, but has since said record was printed sent up a copy of said opinion duly certified, the said opinion may now be printed and annexed to said printed record as a part thereof, in compliance with the rules of this court.

BENJ. F. BUTLER,
Solicitor and of Counsel for Appellants.
C. FRANK PARKHURST,
Solicitor and of Counsel for Appellees.

Circuit Court of the United States, District of Rhode Island, *sc:*

EVAN RANDOLPH
v.
QUIDNICK COMPANY *et al.*
In Equity. No. 2059.

Opinion of the Court. Filed April 9th, 1886.

COLT, *J.:*

In Austin *v.* Sprague Manufacturing Company, 14 R. I., 464, the supreme court of Rhode Island, in a carefully considered opinion, held that the conveyance by the Spragues to Chafee was not made to hinder, delay, and defraud creditors, and that it was valid under the State statute. (Pub. Stat. R. I., c. 173, § 1.) In Moulton *v.* Chafee, 22 Fed. Rep., 26, this court held itself concluded by this decision on the ground that Federal courts are bound to follow the decision of the highest court of the State in the construction of a State statute.

The same question is raised again in the present suit. If the conveyance to Chafee is valid the plaintiff clearly derived no title to the stock in controversy under the levy and execution sale, and he consequently has no standing in court. The facts in this case do not differ materially from Austin *v.* Sprague Manufacturing Company. We see no reason for changing or modifying the conclusion reached by this court in Moulton *v.* Chafee that we are bound to

follow the decision of the supreme court of Rhode Island in Austin *v.* Sprague Manufacturing Company. The binding effect of the decision of the highest court of a State in the construction of a State statute upon the Federal courts is a doctrine long recognized and well settled. Polk's Lessee *v.* Wendell, 9 Cranch., 87; Shelby *v.* Guy, 11 Wheat., 361; Geeen *v.* Neal's Lessee, 6 Pet., 291; Nesmith *v.* Sheldon, 7 How., 812; Van Rensselear *v.* Kearney, 11 How., 297; Webster *v.* Cooper, 14 How., 488; Leffingwell *v.* Warren, 2 Black., 599; Walker *v.* State Harbor Commissioners, 17 Wall., 648; Fairfield *v.* County of Gallatin, 100 U. S., 47.

The Rhode Island supreme court having determined under a similar state of facts that the conveyance to Chafee was not within § 1, ch. 173, of the Pub. Stat., such determination, in our opinion, is conclusive upon this court, and it follows that the present bill must be dismissed.

Benj. F. Butler, A. & A. D. Payne, counsel for complainant.

C. Frank Parkhurst, Jas. Tillinghast, Chas. Hart, Benj. F. Thurston, C. H. Parkhurst, R. Gardner, counsel for respondents.

UNITED STATES OF AMERICA, }
District of Rhode Island, } ss:

CLERK'S OFFICE, U. S. CIRCUIT COURT,
PROVIDENCE, *Sept. 5th*, 1889.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the foregoing two printed pages contain a true copy of the original now on file in this office in the within-entitled cause.

Seal of Circuit Court, Rhode Island.

In testimony whereof I have hereunto set the seal of said court and my hand on the day and year above written.

HENRY PITMAN, *Clerk*.

[Endorsed:] Supreme Court U. S. 1889, October term. No. 213. John S. Jencks *et al.*, ex'c'rs, &c., app'ts, *v.* The Quidnick Co. *et al.* Stipulation for addition to record.

[Stamped:] Office Supreme Court U. S. Filed Oct. 22, 1889. James H. McKenney, clerk.

THE UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States to the judges of the circuit court of the United States for the district of Rhode Island, Greeting:

Whereas in a certain suit in said circuit court between Evan Randolph, complainant, and The Quidnick Company *et al.*, defendants, which suit was removed to the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"That the original process and return thereon made in the case of Gorham P. Pomroy, assignee, *vs.* Evan Randolph *et al.*, equity, No. 2161, in the State court of Rhode Island, are omitted from the transcript of the record."

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find, to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 24th day of September, A. D. 1889.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Circuit Court of the United States, District of Rhode Island, *ss:*

I, Henry Pitman, clerk of said court for said district, do hereby certify that, pursuant to the command laid in the within writ, I have searched the record and proceedings of this court in the cause Evan Randolph *vs.* Quidnick Company *et al.*, and do not find the original process and return thereon made in the case of Gorham P. Pomroy, assignee, *vs.* Evan Randolph *et al.*, equity, No. 2162, in the State court of Rhode Island, as making a part of the record in the first-mentioned cause.

Seal of Circuit Court, Rhode Island.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 3rd day of January, A. D. 1890.

HENRY PITMAN, *Clerk.*

[Endorsed:] Sup. Court, U. S. 1889. Oct. term. No. 213. John S. Jencks & *al.*, app't-, *vs.* The Quidnick Co. *et al.* Writ of error & return.

[Stamped:] Office Supreme Court, U. S. Filed Jan. 7, 1890. James H. McKenney, clerk.

Supreme Court U. S.
FILED.
MAR 3 1890
JAMES. H. McKENNEY,
CLERK.

Supreme Court of the United States.

October Term, 1889.

In Equity, No. 213.

JOHN S. JENKS, WILLIAM H. JENKS, AND CHARLES RHOADES,

Executors of Evan Randolph, deceased, Appellants,

v.

THE QUIDNICK COMPANY ET ALS.

Brief on behalf of Appellants.

BENJ. F. BUTLER,
O. D. BARRETT,
Of Counsel.

Supreme Court of the United States.

October Term, 1889.

EVAN RANDOLPH'S
Executors, Appellants,

v.

QUIDNICK COMPANY,
et al., Appellees.

In Equity. No. 213.

Plaintiff's Brief.

STATEMENT OF CASE.

This suit was begun on the second day of August, 1873, by the Executors' Testator to establish his right to 4,022 shares of the capital stock of the Quidnick Manufacturing Company of Rhode Island.

For many years before the first day of December, 1873, there had existed a partnership in Providence, Rhode Island, composed of the father and uncle of Amasa and William Sprague. That partnership was dissolved by the death of the elder Spragues, and reorganized on the rights of parties in the partnership of Amasa and William.

In 1865 (Rec., pp. 408, 409), under an act of the Rhode Island Legislature (the act of 1862), the A. & W. Sprague Manufacturing Company was established as a company "*for manufacturing and printing*," and no other purposes. The capital stock was $1,000,000, divided into shares par value of $100 each; said shares to be "personal property," non-assessable beyond par value, and "transferable only on surrender of the old certificates on the books of said corporation." (Rec., p. 408.)

The business of manufacturing and printing of the corporation was exceedingly profitable, so that up to Nov 1, 1873, they had a property in their hands to the amount of $13,992,500, which consisted of real estate, the majority of shares of stock in several corporate enterprises not within the limits of their corporate powers; that is to say, in the Perkins Sheet-Iron Company, all but seven shares in the Sprague Mowing Machine Company, the Comstock Company and others, all of which were foreign to the A. & W. Sprague Company's business. (Rec., pp. 449, 450, 451, 452.)

By the laws of Rhode Island all stockholders were personally liable for all the debts of the company in the first instance, at the election of their creditors, unless certain records were made giving notices which might relieve the stockholders, but which notices had not been given by any of the stockholders of any ~~companies in which the~~ corporations in which the Spragues were in any way interested.

The affairs of said corporation had, from the beginning, been administered by the partnership of A. &

W. Sprague, consisting of Amasa and William Sprague, one of whom was the President and the other the Treasurer of the company; they owning the shares in a majority. The other shareholders consisted of Mrs. Fanny Sprague, Mrs. Mary Sprague, and two sons and two daughters of Mr. Edwin Hoyt, and nieces of Amasa and William Sprague.

A firm had been established in New York as selling agents for the goods made by the Sprague mills, known as "Hoyt, Spragues, & Co.;" and on Dec. 1, 1873, the acceptances of said company outstanding, endorsed by the Sprague Manufacturing Company, were $5,462,300.

By the financial panic of September, 1873, sometimes called the "Jay Cooke" panic, and including Black Friday, the Sprague concerns all became embarrassed and unable to meet their overdue liabilities, or their acceptances as they became due, and which went to protest Oct. 16, 1873; and soon after their several mills suspended operation, and the several firms of the Hoyt, Spragues, & Co., and the A. &. W. Sprague Manufacturing Company and A. & W. Sprague, each suspended payment.

A proposition was thereupon made by the Sprague concerns to the several banks in Rhode Island to take a mortgage upon all the property of the Spragues and allow them to go on, and to meet their maturing and overdue indebtedness make a loan of $1,000,000. (Rec., p. 454.)

A meeting of the various creditor banks was held Oct. 31, 1873, and a committee appointed who should take the whole subject into consideration and report.

Its committee reported the cash valuation of the Sprague properties at $19,495,247, including at cash valuation the assets of the A. & W. Sprague Manufacturing Company; the assets of the private property of the stockholders, belonging to the firm of A. & W. Sprague Manufacturing Company, and Mary and Fanny Sprague, their mother and aunt, and the Hoyt children; and the assets of the Hoyt, Sprague Company; and the liabilities of all the same parties primary and secondary, at $11,775,443, leaving a surplus of $8,819,804 to the credit of the Sprague concerns. (Rec., pp. 452, 553, 454.)

Upon this valuation the committee of banks further reported that the representatives of the banks thought that aid ought to be extended to the Sprague Manufacturing Company, to enable it to meet its maturing obligations, provided the committee shall, upon examination of the affairs of the company, find the sum of $1,000,000 requested sufficient to meet the probable requirements of the company.

They further resolved that the committee to be appointed to make the examination should also take the opinion of counsel upon the validity of the proposed mortgage, and if free from objection under the provisions of the *bankrupt act*, and to ascertain whether the amount requested would be sufficient to enable the company to meet its maturing obligations in the regular course of business. . . . "But in consideration of the unsettled condition of financial affairs and of business at the present time, and the large amount of obligations of the company maturing during the next ninety days preclude the

possibility of your committee reporting that the sum of $1,000,000 would enable the company to meet its engagements regularly in the future, and as, in the event of a failure to do so, the validity of the security might be questioned, your committee, under the advice ofcounsel, are of opinion that the sum asked for cannot safely be furnished."

They therefore recommend that the A. & W. Sprague Manufacturing Company, and the individuals comprising that corporation, mortgage all their property to these *three* trustees who shall practically have all control and management of the entire property. "These trustees to issue notes to an *amount which should fully cover the amount of indebtedness*, these obligations having three years to run and drawing semi-annual interest at the rate of seven and three-tenths per cent. per annum, with the right reserved to pay five per cent. of the debt as often as in their judgment should be practicable.

"It being the duty of the trustees to convert the property and pay the debts at as early a day as possible, it is not unlikely that the whole indebtedness may be cancelled in much less time than the three years." (Rec., p. 455.)

Pursuant to public notice a meeting was held Nov. 6, 1873, at the Horse Guards Armory, a large hall, which was filled, and another committee appointed to examine a trust deed and report the same to counsel and nominate trustees. (Rec., p. 460.)

The trustees and counsel employed by the creditors drew up a trust deed, which was executed on the

twenty-eighth day of November by the Spragues, and given to the three trustees for their acceptance. On the 29th, a letter came stating that, "With an earnest desire to see our way clear to accept the same [trust deed], but, acting under the advice of counsel, we must decline to do so, unless creditors, by some previous action on their part, will protect us against personal liability;" signed by the three trustees. (Rec., p. 465.)

After this letter was received the second committee were in "great trouble" to know what to do. *The Spragues' lawyers fearing every moment that attachments would be put upon the property, the trustees were pressed to reconsider*, and replied that they were unwilling to take any hazard in the business, but would see Judge Thomas in Boston the next day (Rec., p. 463) (but did not because it was Sunday), but did start to go on Tuesday, December 2, and were informed that between 11 o'clock and midnight, December 1 (Rec., p. 349), a deed of trust was executed at the residence of the Spragues to one Chafee (Rec., pp. 461–463), who had not been recommended by any committee, but who is first heard of as invited that evening about 10 o'clock by Mr. Thomas A. Doyle, a brother-in-law of Amasa Sprague, to attend at his mother's house a meeting, and then and there the deed was executed in the manner which will be hereafter commented upon (Rec., p. 348); and the following day all of the manufacturing portion of the property was taken possession of by Chafee and put in the hands of A. & W. Sprague, where it remained for more than six years, or until Chafee and the Spragues quarrelled.

This deed, if executed at all, to Chafee, was before the trustees appointed by the creditors had finally declined to accept.

The one which we will ask the court first to consider is that given to Chafee. It remained with the three trustees, as they had not then finally declined to accept it, but held it under advisement. (Rec., pp. 463–482.)

Trust Deed.

Dec. 1, 1873, this trust deed is claimed to have been executed to Zechariah Chafee, trustee, by the A. & W. Sprague Manufacturing Company, A. & W. Sprague, partners, and Amasa, Mary, and Fanny Sprague, as individuals, purporting to convey all the property of all the grantors in several States, consisting mainly of mills, corporate stocks lying within Rhode Island, described as follows: "All the property which the parties of the first part have in the following towns in the State of Connecticut, viz:" (naming four towns).

It stated under several *whereases* the facts, that the Sprague Manufacturing Company and A. & W. Sprague as partners and as individuals, were indebted to the amount of about *fourteen million* dollars, which indebtedness they desired to fund; and that for this purpose the Sprague Manufacturing Company had made 16,500 negotiable promissory notes, endorsed by A. & W. Sprague, amounting in the aggregate to that sum, payable three years from Jan. 1, 1874, with semi-annual interest at seven and three-tenths per cent., to be used by the trustee in retiring such of the

indebtedness referred to as the holders of it should within nine months surrender or agree to extend for the term of the notes; and provided that the Sprague Manufacturing Company should remain in possession and continue the business at the mills, with power in the trustee to take possession and run the mills at the expense of the estate; that the deed should become void if the notes were paid; that in default of payment of principal or interest the trustee might sell the property, and should do so upon the written request of one-fifth in amount of the holders of the notes, and apply the proceeds, after paying the expenses of the trust and of carrying on the business, ratably to the payment of the notes that had been issued, and of all claims that had been brought in under these presents and were still outstanding, and that he should account for any surplus to the grantors.

Before the 6th of April, 1874, proceedings were commenced in bankruptcy against Amasa and William Sprague and the Manufacturing Company, and it was agreed that the proceedings in bankruptcy should be withdrawn if the Spragues should give four deeds of assignment to trustee Chafee for the benefit of their creditors who had accepted the mortgage in trust deed of November 1, and give power to the trustee to run the mills, without liability or loss to the trustee, save for his own default.

The construction and effect of these deeds will be some of the most important questions to be dealt with.

In May, 1862, being the date, the same month, of

the incorporation of the A. & W. Sprague Manufacturing Company, the QUIDNICK Company was chartered by the laws of Rhode Island, capital $500,000, divided into 5,000 non-assessable shares of the par value of $100, transferable only on the books of the company, each share pledged to the company for all debts and demands, or demands of the company due from each stockholder; no stockholder in said corporation to have the right to transfer his shares therein without first giving ten days' notice of such intention, and ten days' refusal thereof to said corporation at the lowest price at which he will sell to any other person.

Evan Randolph, at and before the delivery of said trust deed, was a creditor of Hoyt, Spragues, & Co.

William and Amasa Sprague were members, with others, of said firm, and as such members were each personally liable for the debts of all.

At the ~~November~~ May term of the United States Circuit Court for the District of Rhode Island, 1882, Randolph brought his action against said William and Amasa Sprague, on said indebtment, and on the ~~seventh~~ 18th day of ~~March~~ August, 1883, attached, as the property of William Sprague, 1,082 shares of the capital stock of said Quidnick Company, and attached as the property of Amasa Sprague 1,082 shares of the capital stock of said company.

Judgment was rendered in favor of said Randolph, in said action, for the $34,500 debt, and $151.61 costs, and execution was issued thereon and levied on said stock, attached as aforesaid; and on the twenty-third day of March, 1883, the same was sold on execu-

tion and purchased by said Randolph, and deeds in due form, dated March 23, 1883, were delivered to him therefor by the marshal. (R., pp. 17–19.)

Horatio N. Waterman, at and before the delivery of said trust deed, was a creditor of the A. & W. Sprague Manufacturing Company for labor performed by him for said company. Mary and Fanny Sprague were stockholders in said company, and as such personally liable, each, for its debts. (*Supra*, p. 2.)

Waterman brought suit against the A. & W. Sprague Manufacturing Company on his said claim, in the Supreme Court of Rhode Island at the October term, 1882, and attached, as the property of said company, 455 shares of the capital stock of said Quidnick Company, and as the property of Mary Sprague 601 shares of said capital stock of said company, and as the property of Fanny Sprague 802 shares of the capital stock of said Quidnick Company.

Judgment in said action was rendered in favor of said Waterman for $12,209.20 debt, and $26 40 costs, and execution was issued thereon for the amount of said judgment and costs, and levied on the twenty-second day of March, 1883, on said shares so attached; and on public sales under said levies said Randolph became the purchaser of 1,858 shares of the capital stock of said company, and deeds in due form, dated —— April, 1883, and acknowledged April 7, 1883, were delivered to him therefor by the sheriff. (R., pp. 20, 22.)

By means of said purchases Randolph became the

true and lawful owner of 4,022 shares of the capital stock of said Quidnick Company, dating, as to 2,164 shares, from the twenty-second day of March, 1883, and as to 1,858 shares, from the seventh day of April, 1883

Having received said deeds from the marshal and from the sheriff, Randolph claimed the right to have them recorded on the books of the Quidnick Company, by the proper officers, and to receive from the company certificates evidencing his title to 4,022 shares of its stock; and to have this done he made demand in due form, but up to the sixth day of August, 1883, his demand was not complied with.

To enforce his title to these shares of the Quidnick Company's stock Randolph brings this suit.

To defeat the claim of Randolph to these shares the defendants reply: —

First. Upon the deed of assignment, or trust deed of Nov. 1, 1873. (R., p. 10.)

Second. Upon certain transfers made of said stock to Chafee as collateral security according to the provisions of said trust deed. (R., pp. 94 and 95.)

Third. Upon the transfers of said stock to Fanny and to Mary Sprague in trust. (R., pp. 95 and 96.)

Fourth. By an attempted transfer of the property in said stock to one Pomroy, a general creditor, by a decree of the State court, entered in summary proceedings on the twenty-fifth day of August, 1883 (R., pp. 124, 149), commenced in said court on the eighteenth day of August, 1883, subsequent to the commencement of this suit — and entered against Fannie and Mary Sprague, defendants in this present suit

instituted against them on a claim to the ownership of said stock. Said summary proceedings were based solely on the neglect of said Fanny and Mary Sprague to file inventories and bonds in accordance with an order of said State court; (R., pp. 104, 124), entered in other summary proceedings in said State court, in which it had no shadow of jurisdiction — in that they were predicated on Gen. Stats. R.I., p. 408, Sect. 11, which has application solely to "*deeds of assignment*" for benefit of creditors.

The alleged "*deeds*" of assignment in this case are certain written forms of transfer, not even under seal, of stock to said Mary and Fanny Sprague on the books of the Quidnick Company (R., pp. 95, 96), which "transfers" were absolute nullities, inasmuch as they were not accompanied by the surrender of the certificates of stock held by the alleged transferors. (R., p. 408; p 518, Int. 54; and p. 180, Int. 33.)

Fifth By an attempted adjudication as to the ownership of said stock by a decree of said State court, entered on the 29th December, 1883, in a suit commenced more than a month after the commencement of this present suit, by said Pomroy, claiming title acquired from defendants to this suit during the pendency of the same; to wit, on the twenty-fifth day of August, 1883, and in which suit thus commenced by said Pomroy said court acquired no jurisdiction over said Randolph — the subject being personal property — the residence of Randolph being in Philadelphia, and he neither entered his appearance in said suit nor filed any answer, nor was served with process within the jurisdiction of said court. (R, pp. 161–164.)

* app. P 168. Sec 1 & 3

Sixth. By a suit of interpleader filed in the State court on the fifteenth day of March, 1884, in the name of the Quidnick Company, by Charles B. Gould and Stephen Harris, then claiming to be treasurer and president respectively of said company, against said Randolph, Pomeroy, Chafee, and others to determine by decree of said court the legal and equitable ownership of the stock in question. (R., p. 149.)

In this suit service was made on said Randolph in Philadelphia, Penn., (R, p. 154); no answer was filed by him or appearance entered for him. On the first day of May, 1884, a single decree, *pro confesso* at its commencement, and *final* at its end, was entered against said Randolph, decreeing that he had no right, title, or interest in said stock, and enjoining him and all persons claiming under him from ever asserting any title thereto. (R., p. 170.)

None of the many questions raised by the bill, supplemental bill, answers and evidence, were passed upon by the learned Circuit Judge of the first circuit. His opinion declares: —

"The Rhode Island Supreme Court having determined, under a 'similar state of facts' that the conveyance to Chafee was not within Sect. 1, Chap. 173, of the Pub. Stat. (*sic.*), such determination, in our opinion, is conclusive upon this court, and it follows that the present bill must be dismissed." (R., last page.)

This decision of the State court was made between other parties upon the face of the deed only, with-

out our testimony specially showing the intentions of the respective parties to hinder and delay creditors, and without passing upon the correlative deeds of April 6, 1874, and without knowledge of, or consideration of the facts in regard to the execution of the deed, or its want of acknowledgment by any of the grantors, as made to Chafee, before recording; or its want of recording after its acknowledgment by William Sprague, who alone acknowledged it as made to Chafee.

Assignment of Errors.

I. The Circuit Court of the first circuit erred in deciding that "the Rhode Island Supreme Court having determined" under a similar state of facts "that the conveyance to Chafee was not within Sect. 1, Chap. 173, of the Public Statutes, such determination in our opinion is conclusive upon this court, and it follows that the present bill must be dismissed."

II. The Circuit Court erred in this, that whatever may be the binding effect upon the Federal courts of a decision of the State courts in construing a State statute, it is submitted that it is error to give such effect to the decision of a State court upon matters of common law which are re-examinable by this court, at least until such decisions have become a rule of property in that State.

III. The Circuit Court erred in this, that the court assumed that the decision of this case required a construction of the State statute which it cites, which statute was passed five years after the

transactions were had and made, the legal effect of which transactions said Circuit Court was then called on to determine.

IV. The Circuit court erred in passing a decree dismissing complainants' bill.

The first and most important point to be decided in matter of law is whether the Circuit Court erred in holding itself so far bound by a single decision made by the State court in the nature of a demurrer, that it could not pass upon any of the questions either of law or fact raised in our case. Its language is as follows: —

"The Rhode Island Supreme Court having determined under a similar state of facts that the conveyance to Chafee was not within Sect. 1, Chap. 173, of the Public Statutes, such determination in our opinion is conclusive upon this court, and it follows that the present bill must be dismissed."

Let us first determine, if we can, what is the relation of the Federal to the State courts as to reviewing their decisions upon matters of law. We suppose it will not be claimed that in the equity practice of the Federal courts, the decision of the State courts upon questions of fact, or mixed questions of law or equity and fact, are in any degree binding or conclusive upon the Federal courts save as the well-received opinions of the English courts

on such matters would be considered advisory only by the Federal courts.

Burrill says (Law of Assignment, p., 471, 472):—

"We gather as a result of their investigations (the New York courts) that the question of fradulent intent is a mixed question of law and fact; that is, that the existence of a certain intent is a question of fact for the jury (when not disclosed by the papers) and for the court to declare whether such intent be fradulent or otherwise."

Goodrich *v.* Downs, 6 Hill, 438.
Nightingale *v.* Harris, 16 Rhode Island, 321.
Criticised and explained in
Gardner *v.* The Bank, 13 R.I., p. 1., by Durfee, C.J.

The construction of the trust deed upon the face of it was a question of law to be decided on demurrer. Whether the trust deed taken together with the evidence in our bill is fraudulent becomes a mixed question of law and fact, which question in a court of equity may be decided by the court, or it may ask the intervention of a jury. Now, if the Circuit Court found that it was bound to follow the decision of the State court that the deed of November 1 was valid on its face, then it was to examine and see whether, upon the facts presented to invalidate the deed, the plaintiff had a right to a recovery, and that the judgment of a State court, if there was any upon the fact, nowhere bound it; but the decision of the court is, that the State court decided upon

"similar facts." Clearly that decision was not conclusive upon the Circuit Court any more than a verdict of a jury between two parties would be conclusive upon two other parties, whether in the same or a different court.

And the same rule does apply where the court discusses the same questions of fact and deduces from them a presumption of law. Such conclusions of the court have nothing to do with the State statute; they are conclusions drawn from the principles of common law or commercial law, or the rules that govern the decisions of courts in equity or maritime law, and no decisions of State courts upon such principles of law as applied to a given state of facts have ever been held binding upon them by the Federal courts.

There is a statute upon a given subject. A settled course of decisions of the State has given that statute a certain construction, and that construction must obtain. So, a rule of property is laid down by the settled decisions of the State courts, and that rule must obtain in the Federal courts; but it does not at all prevent the Federal courts from examining a given case of fact, whether those facts are stated in writing or otherwise, and see if they come within the rule. We think it will be difficult to find anywhere a decision that the United States courts are bound to construe any fact in the same way and to the same effect which the State court construes it. Spare us an illustration: A long-settled course of decisions of the State court requires three witnesses to a will to make it valid. If a State court, when

examining a paper purporting to be a will, should decide that there were only two witnesses, when in fact there were three, would the Federal court be bound by the State decision, especially when the Federal court had acquired jurisdiction of the subject matter and parties before the State court had rendered its decision.

We find that when a construction of a law establishing a rule of real property has been fully settled in the State courts, the same rule will be applied by the United States Supreme Court. This has been fully determined by a course of decisions by the Federal tribunals.

We have not cited the long list of authorities upon this point for the establishment of this rule, but only refer to the very full and elaborate opinion of this court delivered by Mr. Justice Bradley in the case of Burgess *v.* Seligman *et al.*, 107 U.S. Reports, p. 20, but we may have occasion to cite such list of authorities for another purpose hereafter.

We also find the rule that in administering the local law of the State, the courts of the United States follow the settled decisions of the court of last resort in the State in question. This rule of law has been, perhaps more than any other, from the earliest times considered and adopted by the courts of the United States. The rules of property duly recognized by the State law furnish the guide to the courts of the United States upon questions of title.

Sims *v.* Irvine, 3 Dall., 425, 456.

Waring *v.* Jackson, 1 Pet., 570.

Davis *v.* Mason, 1 Pet., 503.

Bank of Hamilton *v.* Dudley, 2 Pet., 492.
Hinde *v.* Vattier, 5 Pet., 398.
Clarke *v.* Smith, 13 Pet., 195.
Wilcox *v.* Jackson, 13 Pet., 498.
Amis *v.* Smith, 16 Pet., 303.
Fisher *v.* Haldeman, 20 How., 186.
Miles *v.* Caldwell, 2 Wall., 35.
Bayerque *v.* Cohen, 1 McAll., 113.
New England Screw Co. *v.* Bliven, 3 Blatchf., 240.

We have given all these citations as showing the origin of the rule, which cannot be doubted to have been the tender regard of the Supreme Court in the earlier times, necessary to be had for State laws which established rules for a certain species of property; to wit, slave property.

Perhaps the rule is stated with as much explicitness as anywhere in

Meade *v.* Beale, Taney, 339-359.

We do not intend to impugn, criticise, or demur to any of the earlier decisions herein quoted, but add to them

Townsend *v.* Todd, 91 U.S.R., 452.
Grafton *v.* Cummings, 99 U.S.R., 100.

—where the rule is expressed in the following words: "The Federal courts are bound to follow the course of decisions of the highest court of the State in the construction of its statutes, if the course has been uniform."

It will be observed that the decisions relied upon by the court below are

Shelby *v.* Guy, 11 Wheaton, 361.

Polk's Lessees *v.* Wendell, 9 Cranch, 87.
Green *v.* Neal's Lessees, 6 Peters, 291.
Nesmith *v.* Sheldon, 7 Howard, 812.
Van Renslear *v.* Carney, 11 Howard, 297.
Webster *v.* Cooper, 14 Howard, 498.
Leffingwell *v.* Warren, 2 Black, 599.
Walker *v.* State Harbor Commissioners, 17 Wallace, 648.
Fairfield *v.* County of Galatin, 100 U.S., 47.

We bring these cases upon which the court below relied to the attention of the court, and we shall endeavor to show that they do not authorize its decision.

It is to be observed at the outset of this discussion that the only case in Rhode Island which the lower court cites as conclusive is Austin *v.* Sprague, 14 R.I., p. 464, where a decision was made of the principles of law which were held conclusive upon it, and indeed no other authority could be found.

This decision was made eight months and twelve days after this suit was begun in the Federal court in Rhode Island; so, if this case ought to have been decided upon the law as it stood in Rhode Island at the date when it was brought before the Federal court, to wit, Aug 2, 1883, there would have been found no decision in Rhode Island operative upon the court.

We shall see hereafter that there has been a race of diligence between the State court of Rhode Island and the Federal court in said State in this case as to which should first reach a decision.

The law of Rhode Island as to the trust deed has been held in the case of Gardner, *et al.*, *v.* Commercial Bank, decided Dec. 18, 1880, Durfee, Chief Justice, giving the opinion, 13 Rhode Island, p. 1, which is entirely decisive of the law of Rhode Island as to the present case in our favor, and we beg leave to pause in our argument to cite two paragraphs from the decision in that case: —

"Such an assignment [for the benefit of creditors] would be fraudulent and void. For instance, an assignment made by a solvent person in order to protect the property from legal process because the times are bad, and to hold it for better times, would be fraudulent and void, being an attempt by the assignor to get an advantage for himself at the expense of his creditors.

"The validity of this assignment was litigated before the Supreme Court of Illinois, and the court held it to be invalid under the laws of that State, because it appeared on the face of it to have been made, not simply for the benefit of creditors, but to secure an advantage to the assignors; namely, to prevent a sacrifice of their property. We cannot resist the belief that the conclusion of the Supreme Court of Illinois in regard to the purpose of the assignment was correct. And this being so, the assignment is, in our opinion, as invalid under the laws of this State as it was under the laws of Illinois. See the cases above cited."

"In Dunham *v.* Waterman, 17 N.Y., 9, the New York Court of Appeals held, that the provisions in an assignment by an insolvent debtor of all his property, consisting in part of unfinished machinery and materials in process of manufacture, the completion of which was necessary to the advantageous sale

and authorizing the assignees to complete the manufacture and work up the material at the expense of the assigned fund, as in their judgment might be advisable so as to realize the greatest amount of money therefrom, rendered the assignment fraudulent and void on its face. It was urged for the assignees in that case, that the powers which were granted to them were merely such as they would have had by implication without grant, and that therefore the grant would not have the effect of making the assignment void.

"But the court was of the opinion that the assignees took, under the grant something beyond what would have accrued to them by implication; namely, a discretion in regard to carrying on the business, which, unless it was fraudulently exercised, the court could not terminate or control, and that thus, by virtue of this discretion, the creditors might be kept at bay so long as the assignees might see fit to carry on the business. The New York Court of Appeals probably went further in the case of Dunham *v.* Waterman than we should be likely to go in a similar case; but the reasoning on which the court rested their decision has great force in it, and it has vastly more force in its application to its assignment here than it had in its application to the New York assignment. For here the power conferred is not simply a power to work up materials on hand, and to finish unfinished goods with a view to their more advantageous sale, but it is a power to carry on the business as long as the assignees 'may deem for the best interests of the creditors, and necessary for the purpose of preventing shrinkage and loss, and of closing out and liquidating the same to the best advantage.' Nay, more, it is a power to extend the old and to incur new debts, to pledge and mortgage the

personal property and to mortgage the real property, and to lease the real property upon such terms as they may see fit. The business, therefore, may be carried on under the assignment indefinitely by virtue of a sort of forced loan, unless a majority in amount of the creditors see fit to object, and may be carried on, too, by persons to whom a minority of the creditors would never think of lending their money, if they had the option to lend it or not; and even if a majority in amount of the creditors should finally interpose, it may nevertheless turn out that, prior to their interposition, the assignees have, in the exercise of their discretion, leased or mortgaged the property for long terms, and so have put it beyond even their own ability to close up the assignment without great delay. Now, can it be held that an assignment which expressly permits and empowers the assignees so to protract the day of settlement, and to subject the creditors to such coercion, and to so burden and tie up the property assigned by new contract and conveyances, is not fraudulent and void on the face of it as manifesting an intent to hinder and delay the creditors, for the reason that any hindering or delaying consequent on the execution of the assignment, according to its terms, may be supposed to have been intended simply for the benefit of the creditors, and not with a view to any advantage or benefit to be gained by the assignors at their expense? We think it would be unreasonable, regarding simply the assignment, to so hold. There is, moreover, a limit to the delay which is permissible in closing out an assignment, even when the purpose of the delay is to insure a fuller payment of the debts, for it is often as important to the debtor to be promptly as to be fully paid. What the limit is depends, of course, on what is reasonable, considering the character and circum-

stances of the property assigned. The assignment here does not hold the assignees to any such limit; on the contrary, it empowers them to exceed it, even if it does not conclusively demonstrate an intent to have them exceed it. See D'Ideniors *v.* Leavitt, 23 Barb. S. C., 63.

"The complainants contend that the assignment is valid according to Rhode Island precedents, which are less exacting ~~than~~ those that of many other States."

But we shall have to bring this whole case which, we repeat, we believe to be decisive before the court when we examine the trust deed. We are now upon the state of the law when our case was entered, and when our attachment and levies following thereon were made which gave jurisdiction to the Circuit Court.

In the opinion in our case the lower court says: —

"In Moulton *v.* Chafee, 22 Federal Reporter, p. 26, this court held itself concluded on the ground that Federal courts are bound to follow the decision of the highest court of the State in the construction of a State statute."

And the court cites Austin *v.* Sprague only. The decision in Moulton *v.* Chafee was upon an interlocutory order, the case being afterwards settled by the parties.

Rhode Island adopted the English Statutes including the Statutes of Elizabeth at the time of the Revolution, in the words following: —

"In all cases in which provision is not made herein, the English Statutes introduced before the

Declaration of Independence, which have been continued to be practised under, as aforesaid, in this State, shall be deemed and taken as part of the common law thereof, and remain in force until otherwise specially provided." Gen. Stat., Chap. 260, Sect. 3

By Chap. 162 of the Gen. Stat., the 13th Statute of Elizabeth, Sect. 5, was quite exactly reënacted. By Public Laws of June 30, 1878, a statute was made declaring all preferences of creditors fraudulent. In 1882, the Pub. Stat., Chap. 173, reproduced the provisions of the Statute of Elizabeth as set forth in the General Statutes; and the Statute of 1878 against preferences was also re-enacted in Pub. Stat., Chap. 237, Sect. 14. This statute deals only with assignments thereafterwards made.

Thus, there was no decision by the State court, which was relied upon by the Circuit Court as binding them, upon any statute which existed in 1873 and 1874 when the fraudulent deeds which our bill seeks to invalidate were made, and until three years after all the property of the A. & W. Sprague Manufacturing Company, if Chafee is to be believed, had passed out of his possession: —

Affidavit as to December 21, 1875.

"I, Zechariah Chafee, under oath do state that at the time the writ in the above-entitled cause was served, I had none of the estate of said defendant corporation, either directly or indirectly, in my hands or possession." (Record, p. 488.)

We have been thus careful to set out that the Circuit Court ruled upon a single decision of the State court in both the Moulton and Randolph cases, which in the case of the latter was begun and carried on in the Circuit Court more than eight months before Austin and Sprague was decided, and the court claim that that decision was upon the effect of a statute upon the construction of a deed, when it conclusively appears that no such statute existed, and the statute that the court cites took effect on the first day of February, 1882, or more than eight years after the deed was made, without considering that that statute was only declaratory of the common law of Rhode Island.

The court will further observe that in Shelby *v.* Guy, *ubi supra*, 12, which the court cites as showing that a single decision of a State court is binding upon the Circuit Court, expressly decides that a single decision is not binding upon the Federal court; and all the decisions cited by the Circuit Court in its justification state the proposition for which we contend, that in order to have the State law binding upon the Federal court there must be a settled decision of that law by the court or Legislature of that State before it is conclusive. Indeed in the case of Webster *v.* Cooper, cited by the Circuit, *ubi supra*, p. 28 the point has been decided by the Supreme Court of the State of Maine in five different cases, all in the same way, extending over a series of years as to the constitutionality of a Statute of that State, and yet it was again brought in question.

The distinctions that we make are obvious: —

First, That no decision of the State court, at first made after the jurisdiction of the case at bar had been obtained by the Federal court, changes or alters the power of that court to decide questions whereof they had obtained prior jurisdiction; that the decision should be made as to the law of the State as it stood at and before the date the jurisdiction of the Federal court was acquired, indeed, as the law existed at the time of the transactions to be inquired into

These propositions are established by the case of Burgess *v.* Seligman, *et al*, 107 U.S., 20, *ubi supra*.

Second, Take the proposition at its worst against us. We say the case of Austin and Sprague decides only the construction by the State court upon a deed, the law governing that construction being the Statute of Elizabeth, adopted in the State of Rhode Island from the time of the declaration of Independence, as we have seen above. The court in Austin and Sprague, in opening its discussion says: --

"Under our Statute, Pub. Stat., R.I., Cap. 173, Sec. 1, as under the 13th Elizabeth, Cap. 5, a conveyance made with the intent or purpose to delay, hinder, or defraud creditors of their just and lawful actions, debts, etc., is void as to a non-assenting creditor. In administering these Statutes three rules have been recognized."

To show that there is no difference between the statutes, we take leave to extend the Statute of Elizabeth and the law of Rhode Island side by side (Appendix). pp. 165 - 167

The Statute of Elizabeth is more than three hundred years old. It has been the common law of England, and, indeed, as was averred by Lord Mansfield, only declaratory of what was the common law, and of all our States where the common law obtains to the present hour, and has received interpretation through a greater series of adjudications of all the courts in the United States where the common law is a guide, than perhaps any other embodiment of principles of law. It has passed many times under the adjudication of this court, — too many times to recount, as settling the rights of property and the legality of conveyances in the several States of the Union.

The question then arises, can the State of Rhode Island more than three hundred years afterwards enact the Statute of Elizabeth into a State statute, and by a decision of two judges, being in Rhode Island a quorum of five, — and the question of what is a quorum is now agitating the country, and in this case can be easily settled by a count, — give a new construction of a question arising under the Statute of Elizabeth and render it conclusive upon all the courts of the United States as a settled rule of local State law, especially when by the express Statute of Rhode Island and the decision of the courts the Statute of Elizabeth had been made a part of the common law of Rhode Island, not only when it existed under a charter, but since it has adopted an American constitution?

It will be further observed that Austin and Sprague did not pass upon the effect of the four deeds of

assignment of the Spragues and the companies they represented, to Chafee on the 6th of April, 1874; they were not set up in that case. Therefore the Circuit Court could claim no restraint by the law of that case, from interpreting those deeds of assignment, whether being made as between the parties to the trust deed of November 1, under the covenant for further assurance of title, being fraudulent in character, they tainted that deed as part of an unlawful scheme, or whether these assignments validated or invalidated the trust deed of November 1, because of the after effect of their provisions. These are questions certainly which the lower court ought to have considered.

We discuss in our brief elsewhere the validity and effect of these several deeds of assignment of April 6, to which discussion we refer the court. (Brief, pp. 144.)

Again, this bill sets out very important facts showing the invalidity of the trust deed which were not determined and could not be determined or affected by the decision of the court in Austin and Sprague, because they did not arise and were not set out in that bill; and as we again repeat, that whole decision turns upon the effect to be given to the deed of Nov. 1, 1873, substantially upon its face.

Can any reason be stated, and if it can be we will wait to hear it, why the Circuit Court could not have decided the very important questions which we have raised as to whether the deed of November 1st was duly executed, as to whether in fact from the evidence presented it was not purposely and inten-

tionally made to hinder and delay creditors from pursuing their legal remedies upon the property of the Spragues, as all the Spragues and other witnesses testify fully, and the *res gestæ* show it was done, directly and fully, with that intent, and that Chafee was their chosen instrument to aid them in carrying out the scheme, and had full notice of the intent of the grantors in making the deed both before and at the time he received it?

The fact is apparent that the deeds of assignment of April 6, 1876, which have a very important bearing, whether considered as a part of the scheme of getting this property into the hands of the Spragues so as to keep it from their creditors for their advantage, or whether they were additional conveyances between the parties, by their terms adding new facilities for locking up their property as against their creditors, were not at all considered in Austin and Sprague (not even presented by either side to the court, perhaps because Chafee relied upon another deed made the 1st of January, 1874, of the property in controversy in that suit). And certainly their bearing upon the rights of this plaintiff was not therein considered.

There are also very many important matters affecting the validity and effects of the deed of November 1, which we will only sketch here, to wit: The evidence that its making was never authorized by the A. & W. Sprague Manufacturing Company at a meeting properly and lawfully called for that purpose, as appears by the records of said company; that the deed itself was never made, acknowledged,

or recorded in a manner to give it binding force and effect in Rhode Island, or elsewhere, as against this plaintiff; that the deed, because of its manifold character, is not sanctioned by law as a valid conveyance; and numerous other matters, all of which we will discuss hereafter.

What reason can be stated in behalf of the decision of the court below, why the court should not have passed upon these questions which had never then been adjudicated by any Rhode Island State court? and had been determined to be fradulent and void in the State of Connecticut in

DeWolf *v.* A. & W. Sprague Manufacturing Company, *infra*, p. .

We have discussed these elsewhere, believing that this court will pass upon these deeds, their purpose, effect, and bearing upon the rights of the plaintiff. (Brief pp. 103)

Much is said in Austin and Sprague, *ubi supra*, and elsewhere founded upon the recital of assumed facts which were not on the face of the deed, upon the construction of which alone the court was passing as if on demurrer (Austin *v.* Sprague, p. 481–482), upon the binding effect which should be given to the recommendation of a great body of creditors that Chafee should have this conveyance made to him. The actual facts for the first time are set out in this record.

The State court further says "the trustees named by the creditors having declined to serve, the respondant Chafee was made sole trusteee and the mortgage was executed without further change.

Under these circumstances the deed might as well be called the act of the creditors as of the debtors." The fact, as appears by the evidence, is entirely misstated. It is true that as is said in Austin and Sprague the creditors' committee proposed a mortgage of a million dollars to be advanced by the creditors, but the security was not found ample, and they so reported. The creditors then asked that a trust deed, — not a mortgage, — to secure notes equal to the amount of the indebtedness of the Spragues, which, from their examination they assumed to be $11,475,449, should be executed to three trustees to be appointed by the creditors, and such deeds should be prepared by counsel. When the deed was prepared and executed by the debtors in pursuance of a vote of the A. & W. Sprague Manufacturing Company empowering a mortgage to be made to secure $12,000,000, and while the trustees were proceeding to consider the deed as one in view of the Bankrupt Laws and personal liability, could be properly accepted by them — in the night time of December 1, this deed and notes for $14,000,000 was changed and Chafee made sole trustee, having been selected not by a creditor (Rec., p. 24), but by the Spragues, and accepted the trust without the slightest inquiry into the reasons for the preparation of the original deed by alteration, except that he was told that if he did not accept it and get the deed recorded before nine o'clock in the morning the Sprague property would be covered by attachments.

The Spragues being embarrassed made a proposition to their creditors upon being secured, to ad-

vance a sum of money to enable them to go on with their business and pay their debts. Meetings of two classes of creditors were called and two committees were chosen to represent those classes of creditors. (See evidence of Rufus Waterman, Rec., p. 448, Appendix, p. 192 .) et seq.

We submit to the court with great confidence that it will examine the case and do justice upon all the facts between the parties, although that was denied by the court below.

Plaintiff's Title to Property in Suit.

The bill of complaint was filed on the second day of August, 1883, and on the next day service of subpœna to answer on all who were then defendants in this suit.

The object of the suit is to establish complainant's title to 4,022 shares of the capital stock of said Quidnick Company, which he had purchased at judicial sales, as property belonging to the following named defendants — that is to say,

1,082 shares belonging to Amasa Sprague.
1,082 " " " William Sprague.
601 " " " Mary Sprague.
802 " " " Fanny Sprague.
455 " " " The A. & W. Sprague Mfg. Co.

Making a total of 4,022 shares.

Four several deeds had been delivered to said Randolph for said stock about the first of April, 1883; two by the United States Marshal for the district of Rhode Island, and two by the sheriff of the County of Providence, R.I. (Rec., pp. 17–22.) Said deeds given by the U.S. Marshal were for said stock of said William and Amasa Sprague sold on execution under a judgment obtained by said Randolph against said William and Amasa Sprague, as members of the co-partnership of Hoyt, Sprague, & Co., of New York, on an indebtedness of that firm to said Randolph, which accrued prior to the Sprague failure and assignment in the autumn of 1873. (Rec., pp. 2 and 3.)

Said deeds given by the deputy sheriff were for said stock of said A. & W. Sprague Manufacturing Company, and of said stock of Fanny and Mary Sprague, sold on execution under a judgment in favor of Horatio N. Waterman against said A. & W. Sprague Manufacturing Company for work and labor performed for said Company prior to said Sprague failure and assignment. (Rec., pp. 3, 4, and 5.)

~~There is no pretence of evidence that~~ said Fanny and Mary Sprague were stockholders in said A. & W. Sprague Manufacturing Company, and as such were, under the statutes of Rhode Island, individually liable for the debts of said corporation, by reason of their failure to comply with section 11, p. 142, Chap. Gen. Statutes of Rhode Island. (Rec., pp. 214, 215.)

Said Randolph made Chafee a defendant to this suit for the reason that said Chafee claimed to hold

the 4,022 shares of the Quidnick capital stock in question, as collateral security under certain alleged transfers of the same to him; copies of which transfers are found in the Record, pp. 94, 95, and marked Exhibits 1, 2, 3, 4, and 5; and which said Chafee further claimed were made under the provisions of a trust deed, a copy of which is attached to complainant's bill, as Exhibit "A" (Rec., p. 10), purporting to be a conveyance to said Chafee by said Amasa, William, Fanny, and Mary Sprague, individually, by said A. & W. Sprague Manufacturing Company, and by the firm of A. & W. Sprague, of all their property, for the benefit of their assenting creditors, with the exception of certain stocks, which exception is found near the bottom of page 12 of the record, and reads as follows: —

"But excepting from this conveyance all shares of capital stock in any and every corporation, wherever located, belonging to either of the parties of the first part, the same to be transferred to the party of the second part, upon his request in writing, by way of pledge and collateral security, to secure the performance of the conditions of this instrument."

The bill also sets out the transfers of said stock, part to Fanny and part to Mary Sprague, by entries on the stock transfer book of the company, of which exhibits 6, 7, 8, and 9 (Rec., pp. 95 and 96) are copies and charges that the same were made to prevent attachments of said shares by their respective creditors, and to delay and hinder them in the collection of their just debts. (Rec., pp. 6 and 7).

Said Randolph and said Waterman never assented to said trust deed, nor accepted nor claimed any benefit under it; and said Randolph claimed that it was null and void as to them, as a deed made by the grantors to hinder and delay their creditors and prevent attachments of their property; and further claimed that said alleged transfers of said stock to Chafee were part of the fraudulent scheme to hinder and delay their creditors. (Rec., p. 7.)

Said Randolph having received said deeds claimed to have the stock transferred to him on the books of the Quidnick Company, a certificate of stock issued to him, evidencing his title to the same, and prayed that said trust deed, dated Nov. 1, 1873, be declared null and void; that Chafee be decreed to convey to him said stock; that said transfers of said stock to said Fanny and to said Mary Sprague be decreed, as to said Randolph and Waterman, to be null and void; that the Quidnick Company be decreed to record his said deeds, transfer said stock to him on the books of the company, and issue to him certificates for said shares.

Soon after said Randolph had received the deeds for said stock from the U.S. Marshal and from the Sheriff, as aforesaid, certain creditors of the Spragues, who had accepted the terms of said Trust Deed, on the 18th of June, 1883, petitioned the Rhode Island State court under Sec. 1, Chap. 237, Pub. Sts. of Rhode Island, for an order requiring said Fanny and Mary Sprague to file inventories of the stock alleged to have been conveyed to them, as shown by Exhibits 6, 7, 8, and 9 (Rec., pp. 95, 96), and to

give bonds for the faithful performance of their said trust. (Rec., pp. 104, 124.)

Said statute is applicable solely to *deeds of assignment*, said pretended transfers not being even under seal. But the court by summary proceedings on the nineteenth day of July, 1883, ordered said inventories to be filed, and ordered said Fannie and Mary Sprague to give bonds, Fannie in the sum of $300,000, and Mary in the sum of $80,000; and to do the same within twenty days from the date of said order. (Rec., p. 271.)

This present suit, having been commenced by Randolph on the second day of August, 1883, as aforesaid, said Quidnick Company on the sixth day of the same month complied with the demand of said Randolph, recorded his said deeds among its records, transferred said stock to him on its books, and issued to him a certificate thereof (Rec., p. 68, 86) as he had demanded; and on the same day said Fanny and Mary Sprague made formal transfers on the books of the company, of said stock to said Randolph. (Rec., p. 220.)

Fanny and Mary Sprague not having complied with the aforementioned order of said court to file inventories and bonds, the said creditors who had instituted the proceedings under which that order for inventories and bonds was obtained, on the eighteenth day of August, 1883, under Sec. 3, Chap. 237, Pub. Sts. of R.I., commenced other summary proceedings for the removal of said Fanny and Mary Sprague as trustees under said transfers of said stock; and on the twenty-fifth day of the same month,

the State court entered a final decree, removing them, and appointing Gorham P. Pomroy in their place and stead, but required from him no inventory and no bond. (Rec., pp. 124, 149.) Then on the thirty-first day of the same month, Randolph, by supplemental bill, makes said Pomroy a party defendant to this suit, and in it admits that since the filing of his original bill said Quidnick Company did, on the sixth day of August, 1883, record his said deed for said stock, and did issue to him in due form a certificate for 4,022 shares of its capital stock. He also sets forth said summary proceedings in the State court commenced on the eighteenth day of August, which, seven days later ended in a final decree, in form, removing Fanny and Mary Sprague as trustees under said transfers of stock, of which Exhibits 6, 7, 8 and 9 (Rec., pp. 95, 96) are copies, and appointed said Pomroy in their place, and avers that the same was done by the court without jurisdiction, and prays as in his original bill, and also that said proceedings in the State court as to him, Randolph, may be deemed to be null and void, and that he may be decreed to be the owner of 4,022 shares of the capital stock of said Quidnick Company (Rec., pp. 23, 27) and for general relief.

Then on the third day of September following, said Pomroy filed his bill of complaint in the State court against all persons who at that time were parties to this suit, and also against one Jay Cooke Longstreth, praying "that said Supreme Court would decree that by force and virtue of the decree in said bill recited and set forth appointing this defendant assignee of

said Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague, and said A. & W. Sprague Manufacturing Company of said shares of said capital stock of said Quidnick Company, this defendant was entitled to all said 4,022 shares of said capital stock, and was entitled to vote thereon at all meetings of said Quidnick Company; and also praying that said Supreme Court would further decree that said certificate of said 4,022 shares of said stock issued to said Randolph by said William Sprague, claiming to be president of said Quidnick Company, was wrongfully and illegally issued by said William Sprague and was void and of no force, etc." (R., p. 162.)

In this suit, thus commenced by Pomroy, no service of process was made on said Randolph save in the city of Philadelphia, Penn., and no appearance was entered for him, nor any answer filed by him; nevertheless, on the fifth day of November following, the court entered a decree *pro confesso* against him, and on the twenty-ninth day of December following, a final decree was entered granting, in form, said Pomroy the prayers of his bill. (R., pp. 163, 164). Thereupon said Pomroy, claiming to be owner of the majority of the stock of said Quidnick Company assumes control of it, and on the eleventh day of December, 1883, caused a vote to be passed to sell and dispose of the property of said company (R., p. 261), and the 10th. of January following was named as the day for the sale of the property. At said sale the Union Company became the purchaser, and subsequently said Union Company sold a portion

of it to Benjamin B. Knight and Robert Knight. (R., p. 58.)

On the fifteenth day of March following, the Quidnick Company, under the assumed management and control of said Pomroy, filed a bill of interpleader in the State court against all persons who were then parties to this suit to determine to whom the proceeds of said sale should be paid. (R., p. 149.)

In this suit, service was made on Evan Randolph in Philadelphia, Penn., as shown by the return. (R., p. 154.) Said Randolph neither appeared nor filed any answer in said suit, but the State court, however, on the first day of May, 1884, entered against him a combination decree, *pro confesso* in its commencement and final at its close, the final part being worded as follows: "And it is also further ordered, adjudged, decreed, and declared by the court that the said respondent, Evan Randolph, has no claim, right, title, or interest in or to the 4,022 shares of the capital stock of the said Quidnick Company in said bill set forth."

In the mean time the Quidnick Company, by Stephen Harris, claiming to be its president, and said Gorham P. Pomroy, on the fifth day of November, 1883, each filed a plea of a former suit pending in the State court, to wit: Equity suit No. 1932, commenced in 1881 by said Chafee and others (the "others" not being named in the plea) against Benjamin G. Chase, and against all the parties to this suit, except himself, Chafee, and except the firm of A. & W. Sprague. These pleas are substantially the same as the following plea of Chafee, less the second suit, set out in said plea.

Then Chafee, on the fifteenth day of January, 1884, files a single plea of *two former suits pending* in the Supreme Court of Rhode Island, as follows, to wit. (R., p. 41):—

Abstract of the Plea of the Pendency of Suit No. 1932.

Chafee, "together with other co-complainants," (the "other co-complainants" not being named in said plea), *v.* Quidnick Company, A. & W. Sprague Manufacturing Company, Amasa, Fannie, Mary, and William Sprague, and "one Benjamin G. Chase."

The plea avers that Chafee and his co-complainants filed their bill of complaint in said Supreme Court on the thirty-first day of August, 1881, before Randolph claims to have acquired any interest in the stock in question. Avers that in said bill Chafee claimed that the trust deed had been delivered to him, — claimed transfer of stock in question to him as collateral security on the 22d

Abstract of the Plea of the Pendency of Suit No. 2075.

Chafee, "together with other co-complainants" (the other co-complainants not being named in said plea), *v.* Quidnick Company, A. & W. Sprague Manufacturing Company, Amasa, Fanny, Mary, and William Sprague, and "one Benjamin G. Chase."

The plea avers that Chafee and his co-complainants filed their bill of complaint in said Supreme Court on the twenty-sixth day of December, 1882, before Randolph claims to have acquired any interest in the stock in question. Avers that in said bill Chafee claimed that the trust deed had been delivered to him, — claimed transfers of stock in question to him as collateral

(*sic.*) of December, 1873; claimed the transfers of said stock to Fanny and Mary Sprague in trust on the 22d of December, 1873. Avers that all the defendants were served with process (date of service not given), that they entered their appearance (date not given), that they filed answers (no date given) in which they denied making said alleged transfers of stock to Chafee as collateral security, admitted making said transfers to Mary and Fanny Sprague in trust, averred that said bill of complaint is still pending, and that the matters thereof are still undetermined. (No averment as to what relief was prayed for in said bill.)

security on the 22d (*sic.*) December, 1873; claimed the transfers of said stock to Fanny and Mary Sprague in trust on the twenty-second day of December, 1873. Avers that all the defendants were served with process (date of service not given), that they entered their appearance (date not given), that they filed answers (no date given) in which they denied making said alleged transfers of stock to Chafee as collateral security, admitted making said transfers to Mary and Fanny Sprague in trust. Averred that said bill of complaint is still pending, and that the matters thereof are still undetermined. (No averment as to what relief was prayed for in said bill.)

The plea further avers that said court, by virtue of said two suits, had, and still has, jurisdiction of said parties, — of entire subject matter of said suits, and the title to the entire 4,022 shares of stock.

That the defendant named in said two bills included all parties who at the time of entering the same in

said court asserted any claim in said shares of stock.

That in Randolph's bill, the defendants, save Pomroy, who was substituted by decree of court in the place and stead of Mary and Fanny Sprague, are identically the same persons named as defendants in said suit.

That the subject matter of Randolph's bill is identically the same as the subject matter in said suits pending in said Supreme Court; to wit, the title to, and ownership of, said stock.

That by reason of said pending bills and proceedings therein, said State court acquired jurisdiction of the controversy, and of the subject matter thereof, before the exhibition of Randolph's bill in this court.

Said Randolph at time of filing said bill (which one?), in said Supreme Court could not have been made a party.

Wherefore this defendant doth plead said bill (which one?) pending in said Supreme Court, and the proceedings therein in bar, etc.

On the fifth day of January, 1884, by the same Stephen Harris, claiming to be its president, and said Gorham P. Pomroy, each, pleaded the proceedings, including final decree had in the State court in a suit commenced by said Pomroy on the third day of September, 1883, against J. Cooke Longstreth, and against all the parties to this suit, save the A. & W. Sprague copartnership. That is, they pleaded the proceedings and final decree of a suit commenced after this suit was commenced, and ended during the pendency of this suit, and in which no service was had on Randolph save in Philadelphia, and in which

he neither appeared nor filed an answer. (R., p. 163.)

On the 8th February, 1884, said pleas were set down for argument and argued, and on the first day of May following a decree was entered overruling them, of which decree the following is a copy: —

"This cause coming on to be heard was argued by counsel, and thereupon, on consideration thereof, it was ordered, adjudged, and decreed that the defendant's pleas be, and the same are, hereby overruled."

By the court,

HENRY PITMAN CLARK.

MAY 1, 1884.

(Record of return of Certiorari p. 5)

Then in June, 1884, Randolph again adds to this present suit, by way of supplemental bill, making said Union Company and its said vendees parties to this suit, and sets forth said proceedings had in August, 1883, in the State court, and the other suits commenced thereafter in said court, and adding as exhibits certain conveyances made under the sales above mentioned, prays for the appointment of a receiver, for an injunction, and prays as he had theretofore prayed in his original and amended supplemental bills, and that said proceedings had in said Supreme Court of Rhode Island as to said Randolph may be deemed null and void, that the acts and doings of the Quidnick Company under the Pomroy *régime* may also be decreed to be irregular, null, and void, etc. (Rec., pp. 44–61), and for general relief.

Randolph having filed his supplemental bill as aforesaid, Chafee, on the sixth day of September following, files a separate answer, setting forth in defence the trust deed, dated Nov. 1, 1873, made to himself (Rec., p. 63); the transfers of the stock in question made as collateral to him Dec. 2, 1873 (Rec., p. 63); the transfers of said stock made in trust, part to Mary, and the remainder to Fannie, Sprague on the twenty-second day of December, 1873 (Rec., p. 63); avers that Waterman did acquiesce in said trust deed (Rec., p. 64); sets up the four deeds of assignment made to him on the 6th of April, 1874 (Rec., p. 64); denies that the Quidnick Company ever legally recognized Randolph's title to said stock (Rec., p. 66); admits the summary proceedings commenced in the State court referred to in Randolph's first supplemental bill (Rec., p. 24), commenced August 18, and ended by a final decree entered seven days later, and then adds averments covering a whole page, based on the mistaken idea of Chafee that Pomroy had obtained a decree of the State court appointing him assignee in the place of Mary and Fanny Sprague, prior to the commencement of this suit, which he, Chafee, admits was "commenced on or about the second day of August, 1883" (Rec., p. 67); sets up the proceedings in the interpleader suit (Rec., p. 69) No. 2233, commenced March 15, 1884, and ending May 1, 1884, in a combined decree both *pro confesso* and final, against said Randolph, denying all his right, claim, and title to the stock in question, and enjoining him and all claiming under him from asserting any claim to the

same. (Rec., p. 69.) In this suit the only service made on Randolph was in Philadelphia, Penn. (Rec., p. 154); he did not appear, did not file any answer (Rec., p. 170); and said Chafee craved leave to submit as part of his answer a certified copy of said record, and prayed same benefit and advantage "as if the same had been set up by way of plea." (Rec., p. 70.) For copy of record referred to see Exhibit 26. (Rec., pp. 149–173.)

On Sept. 19, 1884, the Quidnick Company, by Charles B. Gould, secretary, Pomroy, and the other defendants in this suit filed their answer (R., p. 79), setting up substantially the same defences found in Chafee's answer, including the proceedings had in said interpleader No. 2233 (R., p. 90), and made a certified copy of a part of said proceeding a part of their answer. (R., pp. 149–173.)

And they claim the benefit and advantage of said proceedings the same as if they had set up the same by way of plea. (R., p. 90). The certified imperfect copy of said proceeding in the interpleader suit No. 2233, above referred to, contains an imperfect copy of the proceedings had in Pomroy's suit against Randolph and others commenced in September, 1883 (R, pp. 161–164), which very proceedings said Pomroy and said Quidnick Company had previously pleaded in bar to this suit (R., p. 30), and which pleas had been overruled as aforesaid.

The answers being filed, the plaintiff filed the general replication to said answers on the 26th of September, 1884. (R, p. 174.)

The result of the pleadings is, that the plaintiff, to

maintain his title to the stock in question, depends on his purchases of the same at judicial sales, under judgments obtained on debts contracted prior to the making of the trust deed, and for the payment of which all the defendants to the original bill of complaint were either directly or indirectly liable, and on the transfers of the stock made to him on the transfer stock book of the company, and on the certificate of stock issued to him by the Quidnick Company.

And the defendants to defeat this claim of title, depend

1. On said trust deed.

2. On the transfer of stock which Chafee claimed was made to him as collateral security by several of the defendants to this suit on the second day of December, 1873.

3. On the transfers of said stock made in trust, part to Fanny Sprague and the remainder to Mary Sprague, on the twenty-second day of December, 1873.

4. On the four trust deeds made to Chafee on the sixth day of April, 1874

5 On the proceedings of the State court commenced Aug. 18, 1873, resulting in a decree purporting to substitute Gorham P. Pomroy in the place of Fanny and Mary Sprague, under said transfers of stock in trust made on the twenty-second day of December, 1873.

6. On the proceedings and final decree passed in the suit commenced by Pomroy, Sept. 3, 1883.

7. On the proceedings and final decree passed in the interpleader suit commenced on the 15th of March, 1884.

II.

The trust deed dated Nov. 1, 1873, and the deeds of assignment made to Chafee on the sixth day of April, 1874, by Amasa Sprague, William Sprague, and the A & W. Sprague Manufacturing Company, respectively, were of no validity as against the claim of Randolph in this suit to title to 4,022 shares of the capital stock of the Quidnick Company, IRRESPECTIVE OF ANY OF THE PROVISIONS OF SAID DEEDS OR OF ANY OF THEM.

1. Because said trust deed, considered as the deed of the A. & W. Sprague Manufacturing Company to Chafee, was executed and delivered by Amasa Sprague without the authority of that company so to do, and was never acknowledged by any one, nor recorded in the city of Providence wherein said company had its domicile.

On the twenty-eighth day of October, 1873, the secretary of the A. & W. Sprague Manufacturing Company issued a call for a special meeting of the stockholders of said company, of which call the following is a copy of one of the several notices sent to the respective stockholders: —

October 28th, (187)3.

Mrs. Mary Sprague: —

Madame, — In compliance with the request of more than two-fifths of the stockholders of the A. & W. Sprague Manufacturing Company, to call a

special meeting of the company, notice is hereby given that a special meeting of the company will be holden at their office, No. 3 Exchange place, on Friday, Oct. 31, 1873, at 11 o'clock A M.

Yours truly,

CHARLES GREENE,

Sec'y.

A special meeting of the stockholders was held at the time and place named in the above notice, at which it appears, according to the record, that 7,946 of the 10,000 shares of the capital stock of said company were represented. (R., p. 396.) At this meeting Art. II. of the by-laws was repealed.

That by-law (R., p. 405) provided among other things, that "It shall be his" (the president's) "duty to preside at all stockholders' meetings, to sign all certificates of stock, and to execute the deeds, leases, mortgages, and like instruments of the company."

It was also

"*Voted*, That the treasurer of the company be, and he is, authorized and directed to execute on behalf of the company and affix the seal of the company to a conveyance of all the estate, real and personal, of the company to Rufus Waterman, James Y. Smith, and Henry Howard, trustees, to secure the payment of the notes of the company to the amount of $12,000,000, to be delivered by the treasurer to the trustees, to be used by them in funding the outstanding debts and liabilities of the company. A draft of said conveyance, before engrossment, has been submitted to the company at this meeting, and is approved.

"*Voted*, That this meeting be kept open to assemble at call of the president." (R., pp. 396 and 397.)

Sect. I. of the charter of the company, among other things gave

"Power to make and put in execution all such by-laws and regulations as they may deem necessary for the government of said corporation not repugnant to law or to this act of incorporation." (R., p. 408.)

Section VI. of the charter provides that

"Special meetings may be called and held at such times and in such manner as may from time to time be prescribed by the by-laws of said corporation." (R., p 409.)

Art I. of the by-laws provides that

"Any business may be transacted at any legal meeting without being specified in the notice of the same." (R., p. 405.)

Art. IX. of the by-laws reads as follows: —

"These by-laws, with the exception of Art. VIII., may be amended, enlarged, modified, or repealed, in whole or in part, whenever the holders of a majority of the shares shall so vote." (R., p. 407.)

Notwithstanding these by-laws, we respectfully submit that it was not competent for the A. & W. Sprague Manufacturing Company at its special

meeting, held on the 31st of October, 1873, to authorize the making of the trust deed proposed at that meeting, at which only a part of the capital stock of the company was represented, and in the call of which meeting no notice was given that the stockholders would be called on to authorize the making of said trust deed.

The provision of by-law, Art. I., quoted above, is broad enough in its language to permit anything to be done at a special meeting, called as that meeting was, which the corporation might have done at any legal meeting in the notice of which all the objects of the meeting were duly specified.

The charter in Sect. I, quoted above, gives authority to make such by-laws only as are not "repugnant to law or this act of incorporation."

The point we make is, that the provision of the by-law which purports to authorize the doing of extraordinary business at any legal meeting without previous notice as to the business to be transacted having been given is "repugnant to law," and consequently null and void.

Morawetz in his work on private corporations, Vol. I., Sect. 482, says: —

"A distinction has been made between regular and special meetings The former are held regularly at stated times, according to the charter or by-laws of the company, while the latter are called at irregular or unusual times, at the option of the officer in whom the authority to call them is vested. A notice calling a special or extraordinary meeting must state particularly what the purpose of calling

the meeting is; and no business can be transacted at the meeting except in relation to the matter specified.

"It is unnecessary to notify the shareholders of the particular business to be brought before a regular meeting, unless it be of great importance, and of an extraordinary character. In the latter case the object of the meeting must be specified."

It follows from the above that if the repeal of Art. II. of the by-laws is to be classed as extraordinary business, it could not be repealed even at a regular meeting without previous notice to the stockholders. Also, if the authorization of a mortgage of all the property of a company is to be classed as extraordinary business, that could not be authorized even at a regular meeting without previous notice to the stockholders that they would be called on to vote such authorization

If these acts could not be done at a regular meeting without prior notice, much less could they be done at a special meeting.

And the law, as laid down above, holds that whether said acts are to be classed as extraordinary business or as ordinary business, they could not be done at a special meeting without prior notice.

If Morawetz has correctly stated the law in this behalf, then the article of the by-laws in question is certainly repugnant to the law, and as such was not authorized by the charter, but on the contrary was prohibited by the charter.

Angell and Ames on Corporation, Sect. 489, say: —

"When a day certain is appointed for a particular business, no notice may be necessary when that alone is to be transacted, or the mere ordinary affairs of the corporation are to be acted upon; yet when the intention is to do other acts of importance, a notice of it is required. The election or a motion of an officer, the making of a by-law, or any act of similar importance, on any day not expressly set apart for that particular transaction, is illegal and void."

Boone in his work on Corporations, Sect. 62, says: —

"A distinction is made between general stated meetings of a corporation and special meetings; . . . the latter are called upon emergencies, upon particular occasions and for special purposes."

In Sect. 54, he says: —

"In the absence of any provision on the subject, meetings must be called by personal notice, . . . and it should state the business to be transacted, excepting the case of stated general meetings, and meetings regularly held for a particular object; . . . notice of extraordinary meetings should specify the occasion of the summons and the business proposed to be transacted."

The law of corporations as laid down by the above-named text-writers has been held to be the law of Rhode Island in a case which is substantially like the present suit so far as it relates to the subject of special meetings and by-laws.

In the case of the Atlantic De Laine Company *v.*

Earle P. Mason and others. (5. R.I. 463) it appears (p. 465) that the charter of the company provided that —

"All or any business of the corporation may be transacted and acted on at any legal meeting thereof."

And it further appears (p. 468) —

That the act complained of was done at a special meeting "not holden at the time fixed for the regular meeting of the corporation, and that it was done without prior notice to the stockholders."

The court, in its decision by Ames, C.J., says —

"The assessment to satisfy which the stock of Messrs. Hill, Carpenter, & Co. was sold by the De-Laine Company was illegal, and in consequence the same was void, upon the double ground of want of authority in the corporation to make it, and want of proper notice of the special meeting at which it was made. . . .

"But if the company had, under their charter, power further to assess the paid shares of Messrs. Hill, Carpenter, & Co., it could only be at a corporate meeting duly notified for such a purpose; and the general rule is well settled THAT AN ACT OF SUCH IMPORTANCE CANNOT BE DONE AT A SPECIAL CORPORATE MEETING, UNLESS THE STOCKHOLDERS ARE DULY NOTIFIED OF THE PURPOSE OF THE MEETING, so that they can attend and vote upon a matter so interesting to them.

"The clauses of the charter and by-laws of the company to which we have been referred do not, as

it seems to us, except the special meetings of this corporation out of the general rule. The third section of the charter, after fixing the time of the charter, or annual meeting for the election of officers, goes on to provide, that in case of failure then to elect them, they may be elected at any subsequent legal meeting holden within a year; and that, at special meetings, 'or any business of the corporation may be transacted or acted upon;' and the eighth article of the by-laws passed to carry out the charter requirement, that such meetings 'shall be notified in the manner to be prescribed by the laws of the corporation,' relates merely to the mode of serving notice, and, by its silence, refers us to the general law as to what the notice shall contain."

It thus appears that the general law of corporations requires the business that is to be transacted at a special meeting to be noticed in the call, and the charter of the A. & W. Sprague Manufacturing Company prohibits all by-laws which are repugnant to law; that is, repugnant to the general law governing corporations.

In the case of the People's Mutual Insurance Company *v.* Stephen Westcott and another, 14 Gray, 440, it appears that a special meeting was called of the stockholders of said company —

"In pursuance of a notice duly published, 'for the purpose of making alterations in the by-laws, and for the transaction of such business as may come before them.' At the meeting thus held, the by-laws were altered by making four directors a quorum instead of five, and seven additional directors were chosen."

In commenting upon this act, the court uses the language following: —

"But a decisive objection to the choice of these new directors is, that in the call for the meeting at which they were chosen, there was no intimation of any purpose to make such an election. The only specific subject of action named was the alteration of the by-laws. There was no by-law limiting the number of directors, and no new by-law was adopted respecting the number to be chosen, or altering the time of holding the annual meeting. A measure of such importance to the company, which might transfer the whole corporate power to new hands, could not fairly be embraced in the phrase, 'for the transaction of such business as may come before them.'"

The above decision shows that the general law applicable to corporations is held in Massachusetts the same as in Rhode Island as to the matter now in question.

In the case of the people, *Ex rel.* Low *v.* Batchelor, 22 N Y., 128, a question arose on the following facts: —

"On the 14th of December, 1857, a majority of the Board of Aldermen of the city of New York passed resolutions to give notice to the Mayor that they would meet in convention on the 21st of December, for the purpose of selecting clerks of the district courts in the place of those whose term was (as it was claimed) to expire at the end of the month, and invited the Mayor to be present at this

meeting. There were present and voting nineteen aldermen; the remaining three members of the board were absent.

"On the 18th of December, 1857, there was a stated meeting of the Board of Aldermen, at which seventeen were present, five being absent. The resolution of the 14th of December was rescinded, and a resolution was passed inviting the Mayor to meet the board at half-past six o'clock of that evening, in convention, for the purpose of appointing district clerks. Within ten minutes after the passage of this resolution the Board of Aldermen adjourned, and the Mayor, Fernando Wood, entered their chamber, took the chair, and organized the convention The relator was then appointed clerk of the district court for the first district.

"SELDEN, J. The first question which I shall examine is, whether the plaintiff Lowe was duly appointed to the office he claims, assuming that there was a vacancy to be filled. This depends upon the question, whether it was necessary to give any notice to the absent aldermen of the resolution of the 18th of December, 1857, inviting the Mayor to attend a convention upon the same afternoon, for the purpose of making the appointments authorized by the act of April 10, 1855. (Sess. Laws, 1855, p. 502.) As this statute expressly provides that the powers conferred may be executed at a convention which is attended by a majority only of the Board of Aldermen, the question whether, in the exercise of such powers by a number of persons acting either in a corporate capacity or as private individuals, it is necessary, at common law, that the whole number should actually assemble, does not arise. As a majority of all the aldermen not only attended the convention at which the appointment in question was made, but actually

voted in favor of such appointment, I regard the question of notice as the only one presented; . . . but the question is, whether such of the aldermen as were absent at the time of the adoption of the resolution were not entitled to some notice of the time fixed for the election; or whether, on the other hand, that time might be so arranged as effectually to prevent possibility of their obtaining any notice."

The opinion is lengthy, but the gist of the opinion is, that the election was void on the ground that the special meeting, though held in accordance with the resolution passed at a regular meeting at which some of the aldermen were absent, special notice should have been given to those aldermen notifying them of the convention and the object of the same.

This is a strong case as showing what is the common law governing in such matters. And as we have seen above, the charter of the A. & W. Sprague Manufacturing Company prohibited all by-laws repugnant to that law. This case also has an important bearing upon the subsequent meetings held by said stockholders, which will be presented below. Without quoting from other decisions, we respectfully call the attention of the court to the following cases: —

The stockholders' meeting above referred to adjourned to meet at the call of the president, and so far as the record shows the next meeting was held in pursuance of the "call of the president" on the twenty-eighth day of November, 1873. There is no evidence to show that any notice of this meeting was given to any stockholder.

It was not an adjourned meeting; for an adjourned meeting must be a meeting adjourned to a particular place at a particular time. It was not a regular meeting, for there is no provision for such a meeting found in the charter or in the by-laws. It was, therefore, a meeting held without any authority to be derived either from the charter, from the by-laws, or from the general law governing corporations. But even if we assume that it was an adjourned meeting, still the object of that meeting was not expressed in the call of the meeting of which this was the adjourned meeting, nor was the object of this adjourned meeting given to the stockholders at the time when the previous meeting was held, or at any other time. It therefore follows that no business of the corporation could be legally transacted at such adjourned meeting; nevertheless, the record shows that a meeting was held, but it does not say where. It says that William Sprague, Amasa Sprague, Fannie Sprague, and Mary Sprague were present, but it does not state who presided. It continues: —

"*Voted*, That whereas circumstances have prevented the execution of mortgage above authorized to be made to James Y. Smith, Rufus Waterman, and Henry Howard, Amasa Sprague, treasurer, is hereby authorized to execute a deed of mortgage to Rufus Waterman, Amos B. Lockwood, and George C. Nightingale, as trustees, to secure the payment of the notes of the company to the amount of fourteen millions of dollars, which said deed of mortgage has been examined and approved, and as such treasurer to sign the same on behalf of the corporation and affix the corporate seal thereto.

"*Voted*, That this meeting be kept open to assemble at the call of president."

Evidence elsewhere given by the witness King shows that the trust deed thus authorized was a copy of the one finally executed, as it is claimed, to Chafee, save as to the parties grantees.

It will be observed that this trust deed thus authorized to be executed differs from the one voted on at the meeting of October 31, in the following particulars:—

The first was for $12,000,000. The second was for $14,000,000.

The first was to secure notes to be used in funding the accrued indebtedness of the company. The second was for securing promissory notes to be used in funding the indebtedness of the company, and the indebtedness of five other parties; and also to secure the payment of the indebtedness of the company and of said five other parties, which the holders might agree to extend for three years, irrespective of said notes. Also, to secure all losses that might be incurred by the trustees in running the mills.

The first was to be executed by the company alone. The second was to be executed conjointly with five other grantors with whom said company neither owned any property in common or as joint tenants The first deed was to be a mortgage of all of the estate of the company; the second was to be a mortgage of all the estate of said company and of the other grantors, with the exception of the stock held in other corporations. The first was to be a

mortgage pure and simple, the second was a mortgage with certain provisions added so as to make it capable of being used either as a mortgage proper, or as an assignment for the benefit of creditors. The first, so far as appears from the record, was free from all elements of illegality; the second is such a compound of illegal provisions that no court outside of Rhode Island has ever been able to find enough legality in it by which it could be sustained for any purpose, or for any thing or person, except assenting creditors

If the meeting of the stockholders of October 31 had no authority to authorize the making of the first trust deed proposed, much less authority existed in the stockholders' meeting of November 28 for authorizing the second trust deed proposed.

But the meeting last above referred to was adjourned to assemble at the call of the president; and according to the Record, p. 398, another meeting was held at the call of the president on the first day of December, 1873, at which ~~the~~ meeting it was

" *Voted*, Whereas the persons named as trustees in the deed of mortgage authorized to be executed on the twenty-eighth day of November, A.D. 1873, have up to this date failed to accept said trust; and whereas it is desirable that the creditors of this company should have their debts secured upon the property of the company without further delay, therefore Amasa Sprague, treasurer, be and he is hereby authorized and hereby empowered to execute for and on behalf of the corporation the deed of mortgage dated Nov. 1, 1873, to Zechariah Chafee, as trustee, the draft of which is presented and

approved; and the said Amasa Sprague, treasurer, is hereby directed to affix the corporate seal to the same, and to acknowledge and deliver the said deed to Zechariah Chafee, for the uses and purposes therein declared."

All that has been said in relation to the meeting of November 28 is applicable to this meeting of December 1.

In accordance with this power, Amasa Sprague, on the night of December 1, caused the deeds (not one, but eight or ten, all exact duplicates of each other in every respect) which had been executed and acknowledged on November 28, to be altered as to the grantees, by striking out the names of Waterman, Lockwood, and Nightingale, and inserting in their place the name of Chafee, as grantee, and making such other alterations in the body of the deed as would adapt it to a sole grantee instead of three grantees, and changing the date in the certificate of acknowledgment from Nov. 28, 1873, to Dec. 1, 1873; and without any new acknowledgment he delivered those deeds to Chafee. We submit that according to the Record, the company never legally authorized the delivery of such a deed. Second, that the repeal of the second article of the by-laws at the meeting of October 31, which made it the duty of the president to execute all deeds, mortgages, etc., was illegal, and consequently it was not within the scope of the power of the corporation to authorize on December 1 such a deed to be executed by the treasurer.

Ratification.

While it might be possible for a corporation to so ratify the making of a legal deed which was void merely for irregularity so that such deed would become binding upon the company, it is respectfully submitted that no such ratification can be made as will affect a third party in any way, whose claims on the property conveyed antedate with the illegal deed; that is, if the deed in question was void as to Randolph when delivered to Chafee, it was not in the power of the A. & W. Sprague Manufacturing Company, by any act of theirs, to make that void deed valid as against Randolph.

A ratification of the proceedings whereby the trust deed was made to Chafee was attempted on the eighth day of December, 1873.

A meeting was called by the secretary on the 4th of December, to be held on the 8th, and in the call notice was given that the business of the meeting in part was "To ratify any previous proceedings of this corporation." (R., p 399.)

On the 8th of December, a meeting was held at which was represented 7,946 of the 10,000 shares of the capital stock. Without doing any business that meeting was adjourned until the 12th, and on the 12th a further adjournment was had until the 18th. (R. pp. 398, 399.)

This meeting appears to have been called by Amasa Sprague and William Sprague by his attorney Amasa Sprague. (R., p. 399.)

The record states that "a majority of the stock being present or represented by proxy." (R., p 399.)

The record of the meeting among other things contains the following: —

"The records of the meetings of Oct. 31, 1873, Nov. 28, 1873, Dec. 1, 1873, Dec. 8, 1873, Dec. 9, 1873, and Dec. 12, 1873, were read and approved; and thereupon it was unanimously voted that the proceedings of all said meetings and of all prior meetings of this company, and all acts and doings thereunder be, and the same are, hereby ratified and confirmed."

This meeting was illegal in that it was called by the secretary on the request of Amasa Sprague alone. The record states that it was called also on the request of William Sprague, by his attorney Amasa Sprague. There is no authority shown in the record whereby Amasa Sprague was authorized to add the name of William Sprague to the notice, and Amasa Sprague did not own two-fifths of the capital stock, nor did he claim to give the notice in his official capacity as president.

Amasa Sprague held the proxy of William Sprague which authorized him to vote at meetings; but a proxy to vote is not a power of attorney to use the name of the stockholder in petitioning the secretary to call a meeting

The record contains a power of attorney from William Sprague to Amasa Sprague, dated in 1859, six years before the organization of the A. & W. Sprague Manufacturing Company. It is respectfully submitted that such a power of attorney is not sufficient to enable Amasa Sprague to act for Wil-

liam in the matters pertaining to a corporation which had no existence until five or six years after the power of attorney was given.

1. The attempted ratification is void in that the call does not mention any specific proceedings of the company to be ratified.

Apellants in further support of their contention that said trust deed, considered as the deed of the A & W. Sprague Manufacturing Company, was void for want of authority from the company to make the same, respectfully refer to the evidence of Amasa Sprague. (R., p. 423 Ints. 9, 10, 11, 14, 15; Appendix, p 172-189

2. Because the trust deed, as a deed to Chafee, was never signed, sealed, or acknowledged by Mary Sprague or by her authority, and said deed was never recorded in the city of Providence, the home of said Mary Sprague.

On the night of November 28, 1873, Mary Sprague signed, sealed, and acknowledged the trust deed and authorized its delivery to the three trustees, then therein named, as grantees.

On the night of December 1, 1873, without her authority, consent, or knowledge, at the house of Fanny Sprague the names of said three trustees were erased from the deed; that of Chafee inserted in the place of those erased; and this having been done the deed was delivered before she had any knowledge of what had been done, or any intimation that said change was to be made; and she remained in ignorance of the change until told of it at her breakfast table the next morning; and she never

acknowledged the deed made to Chafee, and there is no evidence that said deed was ever recorded in Providence, the city in which Mary Sprague resided.

The evidence relied on in support of the above is the following:—

The evidence of Mary Sprague (R., p. 514, Ints. 15, 16, 21, Cross 29, Cross 32; Appendix, p).

The evidence of Mrs. Harriet Sprague (R., p. 520, Ints. 10, 16, 18, 19, Cross 34, Cross 35, Cross 36; App., p.).

The evidence of Mrs. Harriet B. Sprague (R., p. 524, Ints, 17, 18, 19, 20, 22, 29; App., p. 187).

The evidence of Francis W. Latham (R., pp. 529, 530, Int. 6, Cross 3; App., p. 190).

3. Because the trust deed, as a deed to Chafee, was never signed, sealed, acknowledged, or delivered by Fanny Sprague, or by her authority, and it was never recorded in the city of Providence, the home of said Fanny Sprague.

Fanny Sprague, on the night of November 28, signed, sealed, and acknowledged said deed as made to three trustees therein then named as grantees, and authorized its delivery to them.

But on the night of December 1, without her authority or consent, the aforesaid changes in the deed were made, and then without her authority or consent the same was delivered to Chafee and recorded without any second acknowledgment by her, either before or after it was recorded by Chafee. The changes in the deed were made at her house, and while they were being made she was informed of the fact that the names of the three trustees were being

erased and that of Chafee inserted; when so informed she was in her chamber; she retired long before the work was done; and there is no evidence that said deed was ever recorded in Providence, in which city said Fanny Sprague resided.

The evidence relied on in the support of the above is the following: —

The evidence of Mrs. Harriet Sprague (Rec., pp. 5, 19, Ints. 2, 8, 11, 12, 13, 14, 15, Cross 24, Cross 31; App., p. 85). The evidence of Mrs. Harriet B. Sprague (Rec., p. 524, Ints. 17, 19, 22, 23, 24, 25, 26, 27, 30, 31, 32, Cross 44, Cross 45, Cross 46; App., p. 87).

4. Because said trust deed, considered as the deed of Amasa Sprague to Chafee, was never acknowledged by said Amasa Sprague, nor was it ever recorded in Cranston, the town in which said Amasa Sprague resided.

The evidence relied on in support of the above is the following: —

The evidence of Amasa Sprague (R., p. 423, Ints. 9, 10, 11, 15). App. 189 – 190.

5. Because the trust deed, which William Sprague did acknowledge and deliver to Chafee on the sixth day of December, 1873 (R., p. 318), was never recorded in South Kingston, the town in which said William Sprague resided.

Another duplicate of said trust deed was recorded in South Kingston on the second day of December, 1873; and afterwards, on the tenth day of the same month, said William Sprague caused his signature, made on the twenty-eighth day of November to said

duplicate, to be witnessed by Henry T. Braman, before whom he, Sprague, on the same day acknowledged said duplicate of said trust deed; whereupon copies of the name of said attesting witness and of the certificate of said acknowledgment by said William Sprague were added to the record of said deed as made on the second day of December as aforesaid; but no recording of the deed itself was ever made in that town after its acknowledgment by said William Sprague as aforesaid. (R., pp. 366, 367).

William Sprague, having acknowledged one duplicate of the trust deed on the ~~sixth~~ eighth day of December, 1873 (Rec., p. 318), the other duplicate which he acknowledged on the tenth day of the same month, and of which a partial record was made in the town of South Kingston in which he resided, was a nullity as to him and as to third parties.

Under the Rhode Island Statute a deed or mortgage is valid on delivery between the parties, without acknowledgment and without registry.

It therefore follows that the copy of the trust deed acknowledged by William Sprague on the ~~6~~8th of December is the deed which transferred his property to Chafee, if in fact it ever was transferred to him by what is known as the trust deed.

His acknowledgment of it gave the deed the same effect as if he had on that day for the first time signed, sealed, and acknowledged it. That it was delivered to Chafee is established by the fact that Chafee himself produced it in evidence as an exhibit. (Rec., p. 307).

Now, if that deed had any validity between the parties as to William Sprague, the duplicate subsequently acknowledged by him on the 10th of the same month was absolutely void, for there was nothing left in him to convey by that duplicate.

Had the law of Rhode Island provided that a deed should not take effect, as between parties, until recorded, then the duplicate acknowledged on the 6th not having been recorded in South Kingston, there would be some show for claiming validity in the duplicate last acknowledged; but the law making the first deed acknowledged and delivered translative of his title, there is no possible ground for claiming any validity as against any party or parties for the duplicate last acknowledged by said Sprague, and if that duplicate itself was utterly void so was the record of it whether perfect or imperfect.

We have found no law of Rhode Island making any provision for the recording of a copy of a deed in the place of the original deed.

If, however, the court shall be of opinion that the duplicate deed as the deed of William Sprague, acknowledged on the tenth day of December, is valid to the same extent it might have been had he not previously acknowledged another duplicate of it, then we respectfully submit that the recording of said duplicate in South Kingston was not such a compliance with the registry law of Rhode Island as was necessary to make that record constructive notice to a subsequent purchaser for value.

We will repeat the facts: The several duplicates of the trust deed which had been signed and sealed

by William Sprague, ready for delivery to three trustees, then therein named as grantees, were subsequently, without the knowledge of said Sprague, altered by the erasure of the names of said trustees and the insertion of the name of Chafee as grantee, to whom they were delivered without any acknowledgment by William Sprague, and by Chafee one of them was recorded in South Kingston, on the second day of December, 1873. Subsequently, on the sixth day of December of the same year, said William Sprague acknowledged one of said duplicates as made to Chafee, but not the duplicate which had been recorded in South Kingston. Then, on the 10th of the same month, he had his signature to the duplicate which had been recorded in South Kingston attested by Henry T. Braman, before whom he then acknowledged the same, and the name of said Braman and a copy of said acknowledgment were then added to the record which had been made of said duplicate on the 2d of the same month, but no record of that duplicate in its entirety was made in that town after its acknowledgment by said Sprague on the 10th of said December.

This is manifestly not a literal compliance with the law, and considered as the deed of William Sprague it is to be treated as the record of a deed recorded without authority of law.

While such a record may be by statute in several of the States made to serve as constructive notice of the deed, our contention is, that it cannot be made to serve as constructive notice in Rhode Island in the absence of any statute of that State in that be-

half, and in the absence of any decision of the courts of Rhode Island construing their registry law so as to make an unauthorized record of a deed constructive notice.

Story in his Jurisprudence, Sect. 404, says: —

"But this doctrine, as to the registration of deeds, being constructive notice to all subsequent purchasers, is not to be understood of all deeds and conveyances which may be *de facto* registered, but of such only as are authorized and required by law to be registered, and are duly registered in compliance with law. If they are not authorized or required to be registered, or the registry itself is not in compliance with law, the act of registration is treated as a mere nullity; and then the subsequent purchaser is affected only by such actual notice as would amount to a fraud."

Chancellor Kent, in the case of Frost *v.* Beekman, 1 John Ch., p. 300, lays down the law in the same way as does Story above.

Another leading case is that of Latouche *v.* Donsany, 1 Schoels & Lefroy, p. 157, wherein Lord Redesdale gives a similar construction to a similar law.

But this court, in the case of Carpenter *v.* Dexter, 8 Wall., p. 532, has made an exposition of the law in question, as follows: —

"The law of Illinois, relating to the record of deeds and other instruments affecting the title to real property, differs materially from the law of nearly every other State in the Union. In most States, these instruments can only be recorded after they

have been acknowledged or proved before certain officers, and the certificate of such acknowledgment or proof is attached. An inscription upon the books of record of an instrument, without such authentication, is considered a mere unofficial entry of the registry, constituting no record, and imparting no notice to purchasers or creditors."

A leading case on this point is that of Heister *v.* Forter, 2 Binney, 40; the syllabus reads as follows:—

"The registry of a deed, defectively proved or acknowledged, is not constructive notice to a subsequent purchaser; although the registry be made in the proper county."

In the above case the deed was acknowledged before one who had no authority to take acknowledgment of deeds.

In the case of Wood *v.* Cochran, 39th Vermont, p. 549,

the court says as follows: "Our statute declares that no deed of bargain and sale, or mortgage, etc., shall be good and effectual in law to hold lands against any other person but the grantor and his heirs, unless the same be acknowledged and recorded; and as this deed was not so acknowledged, the record of it cannot operate as constructive notice to Cochran's grantees, and to charge the land with this mortgage in their hands."

NOTE. — The above deed appeared to have been acknowledged by the grantee instead of the grantor.

Reference is made by the Vt. Supreme Court to the cases of Isham *v.* Iron Company, 19 Vt., 245; Miller *v.* R. & W. R.R. Co., 36 Vt., 479; and Pride *v.* Tyler, 4th. Mass., 541.

See also Sanford *v.* Weeks, 16 (Kan.), p. 465; Brown *v.* Budd, 2 Ind., 442; and Dotton *v*, Ives, 5 Mich., 515.

It has been repeatedly decided in Connecticut that the recording of a deed defective in a statute requisite does not give notice.

Watson *v.* Wells, 5 Conn., 468.

Judge Williams said: —

"The question then comes to this: Is the registering of a defective deed constructive notice so as to bind third persons? Here it is to be remarked that the registering of a deed is a legislative regulation, founded indeed upon the best principles of policy, for the security of titles, but still depending for its effect upon the true construction of the statute. Our statute has prescribed the manner in which deeds of land shall be executed; that they shall be attested by two witnesses, acknowledged before a magistrate; and, to make them effectual against third persons, shall be recorded. The deed to be recorded, then, is the deed spoken of in the statute; that is, a deed executed according to the statute; not the instrument, merely, which the common law would denominate a deed, but the instrument which has the statute requisites to give it validity as a deed; because no other instruments are recognized as grants and deeds of houses and lands; the statute being express that no grant or deed of land shall be valid unless written, subscribed, witnessed, and acknowledged as aforesaid.

Is the recording, then, of such an instrument of any effect? It may, indeed, be evidence tending to prove actual notice; but when the fact of actual notice is negatived, as it is in this case, can the record have any effect upon third persons? Now, if this be a rule of policy, adopted by the Legislature, the court is not to extend it to the cases not within its

provisions; and should it be extended to the case on trial, I know not where we are to stop, or what line to draw. If it be said that no prudent man will stop without looking at the record, that may be said as truly in any other case as in this, and would be applicable to any other defect. But, in point of fact, we know purchases are often made where from the distance of the record, or a reliance upon the integrity of the grantor, no such examination is made. And although this is no excuse for a party, where his case is within the act, yet it may have been the reason why the Legislature did not extend the provisions of the act to cases of this kind. But, whatever may have been their reasons, it is sufficient for me that they have not done so.

It was claimed, on the part of the plaintiff, that Lord Redesdale, in his construction of the English statute, had decided that all deeds and conveyances — whether actual legal conveyances or not, whereby any lands may be affected — are within the view of the Legislature. Now if this were so, perhaps it would be a sufficient answer, that our statute speaks of grants and deeds of bargain and sale, and mortgages, and of no other conveyances. But it is believed that the English authorities are uniform on the subject. In Morecock *v.* Dickens, Ambl., 678, it was said that registering of an equitable mortgage in Middlesex is not presumptive notice, of itself, to a subsequent legal mortgagee, so as to take from him his legal advantage. See also Wrightson *v.* Hudson, 3 Eq. Ca. Abr., 609, pl. 7. And in Underwood *v.* Lord Courtown, 2 Sch. and Lef., 64, the same chancellor above cited says: 'It is contended that the deed operated as a contract; that, being registered, it bound the title to the land, according to the terms of that contract; and that every subsequent purchaser must

be a purchaser with notice. It seems to me that nothing could be more mischievous than to hold that the putting of anything on the registry is notice, within the meaning of that word notice, as applied to courts of equity in such cases.' This is sufficient to show that Lord Redesdale did not mean in the former case what the plaintiff supposed; or, if he did, that he was soon after satisfied that he was incorrect.

"The case of Wendell *v.* Wadsworth, in err, 20 Johns., 659, was cited in support of plaintiff's claim. There was a conveyance of a soldier's right, but without deed deposited in the office of the county clerk; and the question was, whether the deposit of a deed not sealed was within the statute. The deed contained not only a transfer of the land but a covenant for further assurance; and the act required 'all deeds and conveyances, made and executed, or pretended so to be, of and concerning, or whereby any of the said lands might be in any way affected in law or equity, to be deposited.' In this case the chancellor held that the words of the statute were comprehensive enough to embrace the plaintiff's case, reaching every instrument affecting the lands in law or equity; and that the deposit operated as notice would under the registry act. This decision was reversed in the court of errors, on the ground that the statute was not intended, like the registry acts, to affect third persons with notice, but merely to permit those inclined to inspect. But Spencer, J., in giving the opinion of the court says: 'It would seem to me that deeds and conveyances mean the same thing; that they are used as synonymous expressions; and that therefore no paper which was not a deed, and did not convey the land from the grantor to the grantee, was within the words of the statute, or its meaning and intent.' 20 Johns., 662; and in Frost

v. Beekman, 1 Johns. Chan., 288, 300, Chancellor Kent says: 'The question how far the unauthorized registry of a mortgage would charge a purchaser with notice of the mortgage, does not necessarily arise. The better opinion in the book seems to be that it would not be notice.' And in a more recent case before the court of errors, upon an assignment of a mortgage, Sutherland, J., said there was no law requiring the recording of it. 'If he (the appellant in that case) had caused it to be recorded, it would have been a voluntary and inefficacious act. In judgment of law it would have been notice to no one. No presumption can be indulged that if the assignment had been recorded, the respondent would have become apprized of the fact.' James *v.* Morey, in err, 2 Cowen, 246, 296; and in the case of Lessee of Heister *v.* Fortner, 2 Brin., 40, it was explicitly decided that a deed registered which was defectively acknowledged, was not constructive notice to a subsequent purchaser. Add to these the recent opinion of Chancellor Kent in his commentaries, who declares the authorities to be uniform on the subject, except in the State of Louisiana, which, no doubt, is founded on the principles of the civil law, rather than of the common law. 4 Kent's Comm., 167–8.

"It would seem as if these authorities were sufficient evidence of the law, unless cases in the State of Rhode Island are to be found, in which they are denied or doubted. The only case within my recollection is that of Watson *v.* Wells, 5 Conn., 468, 473, where the question was discussed and not decided. The chief justice says, 'I am inclined to think that there was no constructive notice arising from the plaintiff's deed, to which there was only one witness; and that from the record of a deed which is not complete according to law, and which, therefore, conveys

nothing, there is no presumption of notice. On this subject, however, I would be considered as giving no opinion.'

"As a general rule, then, I must think that there is no doubt that the recording of an instrument so defective that it cannot pass title by our law, cannot be considered constructive notice of the existence of such instrument."

Carter *v.* Champion, 8 Conn., 555, 556, 557, 558.

Judge Waite said:—

"Our law makes the record of a valid deed constructive notice of the state of the title created by that deed, but not actual notice.

"In a recent case this court held that the recording of a deed, defective in consequence of having but one legal witness was not constructive notice of such instrument. Carter *v.* Champion, 8 Conn., 549. If each member of this company had given Smith a separate mortgage deed of his interest in the lands to secure the note, and a part of these deeds had been duly executed, and the others but imperfectly, so as to pass no legal title, the record of the former would be constructive notice to subsequent purchasers; but, upon the authority of the case just cited the record of the others would not have that effect. In our opinion the same effect is produced by the parties uniting in the same deed. So far as the deed is valid, the record operates as affording notice, but has no effect beyond that.

"If, indeed, it had appeared that two defendants had actual notice of the contents of the deed, as recorded, the case would be different. Whether a purchaser has or has not actual notice of the contents of a prior deed properly executed and duly recorded,

the effect is the same. The policy of our law makes the record sufficient notice. But the case is otherwise when the deed is defective. Before his legal title can be postponed to a prior equitable title, it must appear that he had actual notice of such equity."

Dickinson *v.* Glenney, 27 Conn., 111, 112.

Swift says: —

"But a deed deficient in a statute requisite, though recorded, does not give constructive notice. A deed without a certificate in writing of its acknowledgment is a nullity, which, though recorded, furnishes no constructive notice. No instance can be found where such a defect has been supplied by a court of equity."

6. Because the deed of assignment made by Amasa Sprague to Chafee under date of April 6, 1874, was made under the duress of bankruptcy proceedings, then recently commenced, and was made in consideration of the withdrawal of said proceeding.

The evidence relied on in support of the above is the following: (Rec., p. 182), *Ints.*, 43, 44, 45, p. 413. *Ints.*, 24, 25, 26. App. p. 176. 178.

7. Because the deed of assignment made by the A. & W. Sprague Manufacturing Company to Chafee under date of April 6, 1874, was made under the duress of bankruptcy proceedings, then recently commenced against said company; and was made in consideration of the withdrawal of said proceedings, and said deed was never recorded in the city of Providence, Rhode Island, in which city said company had its domicile.

The evidence relied on in support of the above is the following: (Rec., p. 182. Ints. 43, 44, 45, p. 413. Ints. 24, 25, 26.) App 176-178.

8. Because the deed of assignment made by William Sprague to Chafee under date of April 6, 1874, was made under duress of bankruptcy proceedings then recently commenced against said William Sprague, and was made in consideration of the withdrawal of said proceedings; and said deed was never recorded in South Kingston, the town in which said William Sprague resided until the sixth day of January, 1883, which was subsequent to the levying of Randolph's attachment on the capital stock owned by said William Sprague, which levy was made on the eighteenth day of August, 1882. (Rec., p. 182. Ints. 43, 44, 45, p. 413. Ints. 24, 25, 26.) App 176-178

The law of Congress, in so many words, makes these deeds of assignment void. True, the courts have held that none but an assignee in bankruptcy can go into court, and ask for a decree of nullity as to such deeds; but we respectively submit that the court should not lend its aid to declare such deeds valid, when interposed as a defence to the creditors of the parties who made them under duress of bankruptcy proceeeings, and in consideration of their withdrawal.

9. Because said Evan Randolph, prior to his purchase at judicial sale of said 4,022 shares of the capital stock of the Quidnick Company had no actual notice of said deeds or any of them.

10. The trust deed is void as to non-assenting cred-

itors, if it is void as to any one of the parties named in it as a grantor, because in such a case a part of those named as grantors dispose of their assets, in part, for the benefit of creditors other than their own, without any considerations or equivalent advantage to their own creditors; and such disposition of property by failing debtors is illegal.

11. The trust deed is void as to non-assenting creditors, because it is the deed of six separate insolvent debtors, conveying property of the grantors, of which property none was held in joint tenantcy or in tenantcy in common.

If such a deed can be maintained in law, then a deed similar in its provisions would be valid made by a hundred, — several debtors for the benefit of their creditors in the aggregate giving preference to such as would comply with the conditions of the grantors. The consequence of such a deed, considered as a mortgage, would be that the non-assenting creditors of any one of the hundred debtors, in order to reach the equity of redemption of their debtor's estate, would be under the necessity of first paying off, not only all the preferred creditors of such debtors, but all the preferred creditors of the hundred debtors, who had combined in making the mortgage.

12. The trust deed is void as to non-assenting creditors, in that it was a manifold deed, of which all the copies, or nearly all, were executed at the same time, and in such manner, that it is impossible to determine which one, by being first delivered, conveyed the property.

Instead of making one deed to be recorded in the

several towns successively wherein the property conveyed was situated, many deeds were prepared, all exact duplicate copies of each other, so that one at the same time could be sent for record to each town where the property conveyed was situated.

To have made one deed and sent it to be recorded successively, in different towns, would have defeated the end in view of preventing attachments of the property; for while the single deed was being recorded in one town, the creditors would be attaching the property of the grantors situated in other towns.

The General Statutes of Rhode Island, Chap. 162, Sect. 4, makes a deed when delivered binding between the parties, without acknowledgment and without registry. It necessarily follows that the deed first delivered to Chafee was the one which transferred to him the property, if any property was transferred to him, and it necessarily follows that all the other copies of said deed conveyed nothing, for there was nothing left to be transferred by their delivery which had not been transferred by the delivery of the first copy. True, the deed by delivery is void as to third parties, until actual notice, or until by registry it becomes constructive notice. It would be absurd to hold that the grantee can claim against the grantor through one deed, the one first delivered, while he would be under the necessity of claiming, as against third parties, through various copies of that deed, which were absolutely void, as between himself and the grantors.

The deed is the grant and not the mere evidence of it, otherwise one copy would be as good as another if the deed was simply evidence.

A patent of the Government may be the mere evidence of a grant; for a grant by the Government can exist without a patent, but not so a deed from a person.

RECAPITULAION OF MATTERS UNDER FIRST PROPOSITION OF ERRORS.

1. The trust deed, as a deed from Fanny and Mary Sprague to Chafee, is a nullity, in that it was never signed, sealed, acknowledged, or delivered by them or either of them, or by their authority, and it was never recorded in the city of Providence, wherein they each resided.

2. As the deed of Amasa Sprague to Chafee, it is void as to non-assenting creditors, in that it was never acknowledged or recorded in Cranston, in which town said Amasa Sprague resided.

3. As the deed of William Sprague to Chafee, it is void as to non-assenting creditors, in that it was never recorded in the town of South Kingston, wherein said William Sprague resided.

4. As the deed of the A. & W. Sprague Manufacturing Company to Chafee, it is void as to everybody, in that it was made without the authority of the company, and for another reason it is void as to non-assenting creditors, in that it was never acknowledged or recorded in the city of Providence, wherein said company had its domicile.

5. As the deed of the A. & W. Sprague copartnership to Chafee, it is void as to non-assenting creditors, in that it was never acknowledged nor

recorded in either of the towns wherein either Amasa or William Sprague resided.

6. The three deeds of assignment made to Chafee on the sixth day of April, 1874, by Amasa Sprague, William Sprague, and the A. & W. Sprague Manufacturing Company, respectively, are void as to all parties, in that they were made under the duress of bankruptcy proceedings then recently commenced against said grantors, and in consideration of the dismissal of said proceedings; and the one made by the A. & W. Sprague Manufacturing Company, for another reason, is void as against non-assenting creditors, in that it was never recorded in the city of Providence, wherein said grantor had its domicile; and the one made by William Sprague is also void as to Randolph, in that it was never recorded in the town of South Kingston until after said Randolph had levied his attachment on the Quidnick stock belonging to said William Sprague.

7. The trust deed, being void as to Mary and Fanny Sprague, is void as to all the non-assenting creditors of the other grantors named in the deed, in that it disposes of the property of the latter for the benefit of the creditors of Fanny and Mary Sprague.

8. The trust deed, made by six several grantors of property, of which they were neither joint tenants nor tenants in common, is void as to non-assenting creditors, in that no creditor can reach the equity of redemption of his debtor without first satisfying all the claims of all the assenting creditors of the other debtors.

9. The trust deed is void as to non-assenting

creditors, in that it was made in manifold copies, all, or nearly all, executed at the same time and in such manner that it is impossible to determine which one, by being first delivered, conveyed the property.

II.

The several entries on the stock transfer book of the Quidnick Company, purporting to have been made on the second day of December, 1873, by Amasa Sprague, William Sprague, Fanny Sprague, Mary Sprague, and the A. & W. Sprague Manufacturing Company, respectively, and purporting to be transfers to Chafee of the stock in question, in pledge and collateral security for the performance of the conditions of the trust deed of Nov. 1, 1873, are void as against Randolph.

Copies of these transfers are found in the Record, pp. 95, 96, being Exhibits 6, 7, 8, 9, 10. It is claimed that these transfers were made under and in compliance with a provision of the trust deed, found in Record, p. 12, which reads as follows: —

"Excepting from this conveyance all shares of capital stock, in any and every corporation, wherever located, belonging to any or either of the parties of the first part, the same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security, to secure the performance of the conditions of this instrument."

As it is claimed that these transfers were made under the above provision, it becomes necessary to

examine the various provisions of the deed in question, and to that end we add the following analysis of its provisions: —

Provisions of the Trust Deed.

The purpose for which said deed was made, as set forth in its preamble: —

1. To secure the payment of 16,500 promissory notes, made by the A. & W. Sprague Manufacturing Company, amounting to $14,000,000, payable three years from Jan. 1, 1874, with interest payable semi-annually at the rate of seven and three-tenths per cent. per annum, until paid. (Rec., p. 10.)

2. To continue in the mean time the business of the mills and print works. (Rec., p. 11.)

Use to be Made of Said Notes.

1. To be by Chafee "used and applied to the payment or retiring of such of the present outstanding indebtedness and liabilities aforesaid (of A. & W. Sprague Manufacturing Company, A. & W. Sprague copartnership, Amasa Sprague, and William Sprague) as the holders thereof, shall within nine months from Nov. 1, 1873, bring in and surrender and discharge.

2. For the payment on retiring of such of said indebtedness as the holders thereof, within the time above specified, shall bring in and agree to extend for the term and according to the provisions of said notes.

(The mystery of this provision indicates the dual character of the deed.)

THE GRANTING PART OF THE TRUST DEED.

The deed grants certain undescribed property of the six parties of the first part ; and also all other property of the grantors, of every kind and nature, wherever situate, excepting all shares of capital stock, in any and every corporation, wherever situated, belonging to any or either of the parties of the first part; the same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security, to secure the performance of the conditions of this instrument. (R., p. 12.)

HABENDUM.

To have and to hold in trust, subject to the powers and provisions hereinafter contained, and subject to redemption on payment made as follows: —

1. Payment of all and singular the debts and liabilities aforesaid, which shall be brought in under these presents and remain outstanding, as hereinbefore provided.

2. Payment of expenses and liabilities of every kind incurred in the execution of the trusts hereinafter created or declared.

3. Payment of all said notes that shall be issued by the trustee and the interest thereon.

Subject to said right of redemption.

I. To permit grantors to retain possession until

the default made or until sale under trusts hereinafter declared.

And such sale might be made at any time before, as well as after, default made (Rec., p. 13), or until entry under power hereinafter contained.

And such entry might be made at any time before default as well as after. (Rec., p. 13.)

II. To take possession of the mills, and at trustee's discretion to operate or close them, or any of them, as he shall deem for the best interest of the creditors.

III. In default of payment of notes secured, or interest, or breach of covenant or agreement herein contained, on the part of grantors continuing sixty days, trustee may sell, etc., and on request in writing of holders of one-fifth of notes issued and outstanding, shall sell, etc.

IV. The deed appropriates the money received (R., p. 14): —

1. To payment of expenses incident to sale.

2. To payment of insurance, taxes, and other charges incurred in respect to trust estate.

3. To pay reasonable compensation to trustee for his services and reasonable counsel fees.

4. To pay all other charges and liabilities paid or incurred by the trustee in carrying on the business or in execution of any of the trust herein created.

V. To pay in full or ratably the following indebtedness: —

1. To pay the principal and interest of all the debts and liabilities aforesaid of the grantors, which

shall be brought in under these presents and remain outstanding.

2. To pay all the notes and interest thereon, that shall be issued by said trustees and be outstanding under and be secured by these presents.

EXEMPTION.

"No trustee under these presents shall be answerable or accountable for any loss which may happen to said trust estate or property, unless the same shall have happened by his own neglect or default."

COVENANTS ON PART OF THE GRANTORS.

1. For further assurance.

2. To keep and maintain at their own cost and charges insurance for benefit of party of second part upon the insurable property conveyed.

3. That profits made by said A. & W. Sprague Manufacturing Company shall be paid over to trustee, to be held as part of the trust funds.

4. To pay all taxes and assessments, rates and charges of every nature that may be laid or levied upon or in respect of said granted premises.

In default of the above, trustee to effect such insurance, pay said taxes, assessments, rates, and charges, and all sums so paid to be a further lien on said granted premises.

The most important fact, developed by the above analysis, is that the trust deed contains no covenant or agreement on the part of the grantors, to pay the

indebtedness, for which the trust deed was given as security, the obligation of the grantors as to that indebtedness being limited solely to the promissory notes, and the original indebtedness for which they had become obligated. It follows that the transfer of the stock as pledge and collateral security could not have been for the payment of said indebtedness.

Because the payment of such indebtedness was not a thing which the grantors obligated themselves to make by the trust deed. The transfers could not have been made to Chafee, as pledge and collateral security, for his performance of the conditions of the trust deed, which by it were devolved upon him to perform, inasmuch as there was no necessity; Chafee was only too willing to perform those conditions, and to run the property according to the terms of the deed, until the most of it had been sunk. There is, therefore, no condition in the deed, for the performance of which said stock could be used as pledge and collateral security, save what may be found in the covenants of said deed, made on the part of the grantors.

These were as we have seen above: —

1. For further assurance.
2. To pay charges and insurance, etc.
3. To turn over profits to trustee.
4. To pay taxes, assessments, etc.

No claim for further assurance has been made which has not been complied with; and no one has ever claimed that the A. & W. Sprague Manufacturing Company made any profits under the management of the grantors, to be turned over to the trustee,

and this reduces the covenants of the grantors to two, on which any claim could be made against them, and these two combined in one amount to the following : —

To keep the insurable property transferred insured, to pay all taxes and assessments, rates and charges, that may be levied upon or in respect to said granted premises.

It will be seen that the whole scope of the cunningly-devised scheme that took a corps of lawyers a whole month to hatch out was based on the idea that the property was to remain in the possession of the grantors, who were to run the mills and pay over the profits to the trustees.

The profits of the mills are found by deducting costs of running them, including insurance, taxes, charges, levies, assessments, etc. Hence, the covenant means that those charges are to be paid out of the gross profits of the mills, and the profits to be turned over to the trustees were the net profits.

But assume that it was otherwise; that the Spragues actually turned over to the trustee all of their estate in good faith, for the benefit of their creditors, and at the same time covenanted to pay out of their own pockets all of the taxes, assessments, levies, charges, etc., that might come on $18,000,000 worth of assets.

At one and one-half per cent. this would be $270,000 per annum, which grantor agreed to pay without the show of a dollar with which to do it; showing conclusively that the intention was that this $270,000 per annum was to be paid out of the gross

profits derived from the use of the mills, while being run by the Spragues.

But the deed itself provided for the payment of all these sums of money by Chafee, the payment to be made out of the trust fund, and the security increased to the amount thus paid. This being so, Chafee having of his own volition chosen to pay those charges out of the trust fund could not call on the Spragues for the collateral to make good the amount so paid without having first demanded it from the Spragues.

There is, therefore, nothing in the record to show that Chafee was ever entitled to use the stock in question, either as pledge or collateral.

What has been said above has been said on the assumption that the trust deed was valid between all parties, third parties inclusive. But as we have shown, under our first assignment of errors, that said trust deed was void, all claim under it to the stock becomes as void as the deed.

The alleged transfers of stock are void, because they were made, not in good faith, but as part and parcel of the general scheme to preserve all of the property from attachment by non-assenting creditors.

MARY SPRAGUE (Rec., p. 514), *Int. 19*, testifies as follows: —

"The transfer was sent over here by George Harris, and I told him I should not sign it. In about an hour afterwards Mr. John Gardner came,

and Mr. Amasa Sprague, and Mr. Gardner said if I did not sign it my property in the Quidnick Company would be attached. I told him I was not going to sign it to Zechariah Chafee. He told me if I would sign it it would be just the same, and I could have the interest from it as if it was my own. They told me it was just a form to save it, and I signed it in this room, on this table (pointing to it). . . . The way he explained it to me, I thought I should hold my stock in that company just the same as if I had not signed this transfer. . . . I did not like to sign this transfer to him, because I did not acknowledge him to be my trustee."

It appears from her evidence (p. 518), that Mary Sprague signed a written agreement with Chafee to transfer to him, when called for, other stocks, and in her answer to *Int. 55*, she says: —

"It was to save my stock from attachment, the same as all the rest of my property. Mr. Thurston came here and told me I must transfer this over to Chafee to save it."

Int. 56. Did you believe, from what Mr. Gardner and Mr. Thurston told you, that Mr. Chafee had been legally appointed trustee, and that it was necessary to make these transfers in order to protect your property from attachments, and did you rely upon their statements in making the same?

Ans. I did.

Amasa Sprague (Rec., p. 180) testifies as follows: —

Int. 30. Was there a pretended transfer of all the stock in said Quidnick Company, of William, Amasa,

Mary, and Fanny Sprague, and of the A. & W. Sprague Manufacturing Company made to Zechariah Chafee, and if so, when?

Ans. There was that transfer, and it was made somewhere in the month of December, 1873.

Int. How was such transfer made?

Ans. It was made to Zechariah Chafee. It was made on the books of the company.

Int. Was there any delivery of the certificates of stock held by these several parties named, to Chafee? I refer to the Quidnick Company's stock.

Ans. No, sir; never demanded, for one of the parties has the old certificate now.

Int. 33. What became of the old certificate?

Ans. They were in the safe of the A. & W. Sprague Manufacturing Company, where they were always kept.

Int. 36. For what purpose was this transfer or pretended transfer of said Quidnick Company stock, owned by said Spragues and said Spragues' Manufacturing Company, made to said Chafee?

Ans. These transfers were made to Chafee and the original transfers were left in the book, so that if any creditors should come forward and attach the stock in Chafee's hand, that transfer they could tear out of the book, and Mr. Chafee could say that he had no stock; and, on the other hand, if it was attached in the hands of the Spragues, those transfers ought to be torn out.

Int. 37. Was it not understood at the time of the alleged transfer to Mr. Chafee, and do you or not mean to have it understood, from what you have

said, that this transfer of the Quidnick Company's stock to Chafee was made for the purpose that if the creditors of the Spragues and Sprague Manufacturing Company should demand Mr. Chafee's sale of said stock, and the application of proceeds to the payment of the indebtedness of the Spragues and A. & W. Sprague Manufacturing Company, that he could say that no transfer of such stock had ever been made to him; and, on the other hand, if a creditor or creditors of said Spragues or Sprague Manufacturing Company should attach such stock, that said Spragues could say that there had been a transfer of all said stock made to Chafee, and this with a view to prevent creditors of said Spragues and said Sprague Manufacturing Company from getting possession of said Quidnick Company's stock, or any benefit or advantage therefrom?

Ans. That is just what I mean. The transaction was made for the purpose of covering up the stock and in keeping it away from creditors.

If these transfers were, in fact, deeds of assignment, as other transfers of the same stock have been claimed to be by the defendants, then, inasmuch as the transfers on the stock book of the Company were not accompanied by delivery of the certificates of stock, they are void as to non-assenting creditors, in that they were never recorded in the proper offices.

III.

The several entries on the stock transfer book of the Quidnick Company, purporting to have been by Amasa Sprague, William Sprague, Mary Sprague, Fanny Sprague, and the A. & W. Sprague Manufacturing Company, respectively, on the twenty-second day of December, 1873, part to Fanny Sprague, and part to Mary Sprague, and purporting to be in trust for the benefit of their respective creditors, are void.

1. Because said transfers were not made in good faith, but were made solely as part of the comprehensive scheme to place the same beyond the reach of non-assenting creditors.

The evidence quoted in support of the second point (*supra*, p. 172 et seq.) is referred to, as showing what the scheme of the grantors was; and in further support of this point we add the following evidence of Amasa Sprague from the record (Rec., p. 181): —

Int. 39. Subsequently were these transfers by you, 1,082 shares, by William Sprague of 1,082 shares, by Mary Sprague of 601 shares, and by the A. & W. Sprague Manufacturing Company to Fanny Sprague in trust, and of 802 shares of said stock by Fanny Sprague to Mary Sprague in trust, and about when did these several transfers occur?

Ans. The transfers were made for the purpose of making it more secure toward keeping it away from the creditors. They were made some time in December, 1873. The stock book will tell; it is only a matter of record.

Int. 40. For what purpose were those several transfers of Quidnick Company's stock made?

Ans. To keep it out of the reach of creditors.

2. Because the transfers entered on the stock transfer book were made without any delivery of the stocks certificates to said Fanny and Mary Sprague.

Amasa Sprague (Rec., p. 180, Int. 33), testifies that the certificates were in the safe of the A. & W. Sprague Manufacturing Company where they were always kept.

3. Because the want of all action on the part of the alleged trustees for nearly ten years, looking to the execution of the alleged trust, shows that the whole transaction lacked even the coloring of good faith.

4. Because the alleged trusts make no provision for rendering the stock available to the creditors, and consequently it was left to the sole discretion of the alleged trustees.

5. Because if those alleged transfers were deeds of assignment, as claimed by Pomroy and other defendants in their proceedings in the State court, commenced August 18, 1883 (Rec., pp. 124, 149).

Then, inasmuch as the stock certificates were not surrendered or transferred to said alleged trustees, so as to give them actual possession of the property, said deeds are void as to Randolph, for want of acknowledgment and registry.

IV.

All the proceedings had in the State court, which were begun subsequent to the commencement of this suit, and which are set out or referred to in the record of this suit, were void as against Randolph.

The proceedings referred to are: —

1. The proceedings commenced in the State court for the removal of Fanny Sprague, Mary Sprague, as trustees, on the eighteenth day of August, 1883, which resulted in a final decree on the 25th of August, appointing the defendant Pomroy in their place and stead, which proceedings are found in the record, pp. 124–149.

2. The proceedings had in the interpleader suit, commenced on the fifteenth day of March, 1884, and which are set up as a defence in the answer of Chafee (Rec., p. 70), and a copy of which proceedings are found in the record as Exhibit 26, commencing on page 149; and are also set up as a defence, in the answer of the Quidnick Company and others (Rec. p. 90), and for copy of same reference given to said Exhibit 26, as aforesaid, commencing Rec., p. 49.

Said proceedings first above referred to are void, as against Randolph, because he was never a party to the same, and further because, at the time of the commencement thereof the Circuit Court had jurisdiction of the subject matter, this suit having been commenced on the second day of August, and service of subpœna to answer having been served on the next day, on those whom the defendants in this suit claim to have been their trustees in relation to

said stock, and who are such trustees, would necessarily represent all the beneficiaries under the trusts.

Again, said proceedings were had under the Pub. Stats., R.I., 237, Sec. 3, Appendix, p. 46 which gives jurisdiction to the court only in case of *deeds of assignment* for the benefit of creditors, and it is respectfully submitted, that said entries made on the stock transfer book of the Quidnick Company are in no sense whatever *deeds*.

Said proceedings second above mentioned were void as to Randolph, in that he was never served with process in said suit, save in the city of Philadelphia, as shown by the return of said process (Rec., p. 154), and never answered or entered his appearance in said suit.

Again, the court should have declared said proceedings void, by reason of the fact that it had already overruled a plea in bar, filed in this suit, based on the proceedings had in a suit in equity commenced in the State court, by the defendant, Pomroy, on the third day of September, 1883, and which proceedings are imperfectly set out in said Exhibit 26, commencing Rec., page 161, with paragraph numbered "Tenth," and which proceedings in said suit number 2,161 were the basis of the decree had in said interpleader suit numbered 2,233 as aforesaid.

That the court may fully see what action was had in the court below upon said plea in bar based on said suit No. 2,161, we submit the following, in relation to all of the pleas pleaded in the case, and the action of the court thereon, and the reasons therefor, as fully as it might be necessary in case the action of

said court relative to said pleas was reviewable by this court.

Pleas in Abatement.

Defences to the various pleas in abatement.

The defendants, Pomroy and the Quidnick Company, respectively filed pleas in abatement to Randolph's Bill of Complaint. (Rec., pp. 28, 30.)

These same defendants subsequently waived their said pleas in abatement, by each filing a plea in bar. (Rec., pp. 32, 37.)

Chafee also filed a plea in abatement. (Rec., p. 41.)

Said three pleas in abatement are all based on the pending of a former suit in the State court, and as to that suit they are all substantially worded alike. Chafee, however, bases his said plea on the pendency of two former suits in the State court. (See analysis of that plea. (Brief, p. 41 .)

These pleas are all invalid.

1. Because the parties to the suit in the State court were not the same as the parties in this suit. Randolph was not a party to the suit in the State court, and the equity under which he claims the stock in question had its origin in the indebtedness of Hoyt and Spragues, and of the A. & W. Sprague Manufacturing Company, that had matured prior to the Sprague failure in 1873, but which became enforceable in equity only after the purchase of said stock by Randolph, at judicial sales, in the spring of 1883, two years after said suit pleaded had been commenced, consequently the equity under which Ran-

dolph claims said stock was not represented, and could not, by any possibility, have been represented in said suit pleaded, at the time of its commencement, and after Randolph purchased said stock at said judicial sales, the complainants in said suit in the State court did not amend their bill and make Randolph a party defendant to it, and there is no process known to equity by which Randolph could have made himself a party to said suit. As Randolph does not hold said stock, or claim to hold it, by either the equitable right, or by the legal rights acquired by him from any party to said suit pleaded, the rule as to a purchase, *pendente lite*, does not apply, and, therefore, he is not and cannot be bound by any of the proceedings in that court.

The two suits have no common object.

The object of the present suit is to establish Randolph's legal title to the stock in question.

The object of the suit pleaded, so far as appears by the record, was to establish title to said stock in Chafee as trustee.

The pleas do not set out the relief prayed for in the suit in the State court. Story, Eq. Pl., sec. 737.

The pleas do not give the names of the complainants in said suit save as follows: "Chafee" together with other co-complainants.

The pleas do not state with certainty when said suit in the State court was commenced. They give the date of the filing of the Bill of Complaint, but do not give the date of any single proceeding had in said suit, so it does not appear with certainty by said pleas, that said suit was pending at the time of the

commencement of this present suit. Story, Eq. Pl. 737.

The double defence of two suits pending, relied on in Chafee's plea needs no comment. It is its own executioner.

Both Pomroy and the Quidnick Company, in fact, waived their said pleas in abatement, by subsequently filing pleas in bar prior to any action having been had on their said pleas in abatement; but aside from said waiver all the pleas in abatement of former suits pending were all properly overruled by the decree passed on the first day of May, 1884 (Rec., p. 5 [illegible] writ of certiorari), and which decree in that behalf was at once final and unappealable.

Stephens *v.* Monongahela Bank, 111 U.S., 198.
Piquignot *v.* Pa. R. Co., 16 How., 104.

The pleas pleaded in bar were rightly overruled.

They appear to have been argued at the same time with the pleas in abatement and were overruled by the same decree passed May 1, 1884. (Rec., p. 5 [illegible] writ of certiorari.)

The final decree pleaded in each plea in bar was passed in a suit commenced more than a month after Randolph brought the present suit in the U.S. Circuit Court. The Circuit Court, having first acquired jurisdiction of the subject matter and of the parties, cannot be deprived of it by any subsequent suit in the State court or elsewhere. The suit was in equity and might have been brought either in the U.S. Court or in the State court; and it is a principle too well settled to need elaborate discussion that in such a case

the court which first acquired jurisdiction is to retain it.

Chapin *v.* James, 11 R., 1, p. 89.
Hagan *v.* Lucas, 10 Pet., 400.
Wallace *v.* McConnell, 13 Pet., 136.
Smith *v.* McIver, 9 Wheat., 532.
Wallet *v.* Dexter, 1 Curt., 178.
Buck *v.* Calbath, 3 Wal., 334.

But aside from the fact that the matters pleaded in bar arose in another court after the commencement of this suit, said pleas were properly overruled because the only service of process made on said Randolph in said suit was made in Philadelphia, Pa., and he never entered his appearance in the suit. As the suit related to personal property only, the court, therefore, failed to obtain jurisdiction of Randolph or of his claim to the ownership of the stock in question. True, the court, in its decree in said suit, declares that "*personal service*" was had on Randolph. The return of service of process is not to be found in the record, but the record teaches us what meaning, in Rhode Island, is attached to the term "*personal service.*"

In his answer to this present suit (Rec., p. 69), Chafee, referring to said interpleader suit No. 2,233, used the following language: "and that thereupon subpœnas were duly issued and personally served on said Randolph."

And the other defendants in their joint and several answer to this suit (Rec., p. 89) use the following language, to wit: "That thereupon subpœnas were

duly issued by said court, which subpœnas were served upon the said complainant" (Randolph) "and said other respondents named in said bill by personal service thereof, and these respondents aver that said complainant, Evan Randolph, wholly disregarded the said subpœnas and the requirements thereof, and wholly neglected and refused to obey the same." But, on p. 154 of the record, we find a copy of the return of the service made in said suit on said Randolph, and find that it was "*personal service*" made on him in Philadelphia, Pa.

The Rhode Island Pub. Sts., Chap. 192, Sec. 28, provides that "The Supreme Court may order service of any process, original or auxiliary, at Law or in Equity, upon persons out of the State, by personal notice, publication in a newspaper, within or without the State, or otherwise, for the purpose of dealing with any property, relation, or persons within the State, or subject to the jurisdiction thereof, according to law."

That Randolph was domiciled in Philadelphia, at the time of the alleged personal service on him, is proven by the petition of Pomroy *et al.* (Rec., p. 272), and by two several orders of the Rhode Island State court. (Rec., pp. 274–275.)

The Validity of the Deed of Nov. 1, 1873, and the Four Deeds of April 6, 1874.

It hardly seems necessary to discuss before this court the validity of those deeds, if they can be ex-

amined under the principles of the Statute 13th Elizabeth, which we have already shown was the only law applicable, in existence in Rhode Island at the time of the transaction, which we claim governs their validity.

Even if the provisions of the public statutes made in 1882 would tend to validate these deeds, it is not the province of legislation to amend deeds, or the effect of deeds, before its act is passed. But we have already seen that these last mentioned statutes and the Statute of Elizabeth are in all essential respects substantially the same. Therefore we claim that the validity of these deeds can be examined by this court according to the settled interpretation of the Statutes of Elizabeth.

Any argument on our part is not embarassed by the fact that whatever may be the character of the deed, — whether a deed of assignment in trust for the benefit of creditors, or whether a mortgage to secure the payment of creditors, or a mortgage in trust, — if the deed in its terms in any way tends to hinder or delay creditors from asserting their legal rights under the provisions of existing law of the State, it is within that Statute.

In Austin *v.* Sprague, discussion was had to show that this deed was a deed of mortgage pure and simple, and must be governed by the principles of law applied to that class of conveyances. Be it so. The fact of such discussion assumes that the Rhode Island court substantially admits that if the deed of November 1st was not a mortgage simply, its provisions would be in contravention of the Statute of Elizabeth.

We submit that a deed of mortgage, if it hinders and delays creditors, must be taken to have been made to do what it does do, and is equally void with any other conveyance under the Statute of Elizabeth. The language of that statute is broad enough, including "all conveyances" to be applicable to mortgages. We might well admit that this paper is in form a mortgage to secure creditors with a resulting trust in favor of the debtor.

But here comes what is almost an impediment in the way of argument: this deed upon its face has been decided to be void as against the Statute of Elizabeth in Connecticut in

DeWolf *v.* Sprague Manufacturing Company, 49 Conn., 282.

Staniford National Bank *v.* Sprague and others, U. S. Circuit Court for the Southern Circuit of New York, 21 Blatchford, 473.

And in the District of Columbia in

Chafee *v.* Blatchford *et al.*, 6 Mackey, R., p. 459, Supreme Court District of Columbia.

We have taken leave to insert from three of these decisions the points of discussion of these deeds as a matter of convenience to the court, so far as they show how, in the judgment of the several learned courts, the deeds are affected by the Statutes of Elizabeth.

Chafee *v.* Blatchford.

6 Mackey's R. (Supreme Court Dist. Col.), pp. 475–478.

The case DeWolf *v.* Sprague Manufacturing Company has been so far quoted and sustained in the preceding decisions that extracts may not be desirable.

These several decisions, recognizing this deed to be a mortgage in trust, have held the deed of November 1 void on its face.

The case of Gardiner *v.* Commercial Bank, 95 Ill., p. 298, 308, decided a deed of assignment in Rhode Island, having many, but not all of the objectionable features of this deed, void as against the Statute of Elizabeth.

Cox J. says

"Now, viewing this question in the light of general principles, and unaffected by the local legislation or local decisions, it seems to us that the reasoning of the court in Connecticut is more satisfactory and entitled to the greater weight. The common sense of the matter may be expressed, we think, in a very few words. A man in debt has a right to prefer any creditor or creditors, and he may execute a mortgage to secure a debt of a certain amount, payable at a certain time. When he does that he has a well-defined residuary interest in himself, in the shape of an equity of redemption, to which his creditors may have recourse. But, if such a conveyance covers up and screens the equity of redemption, and puts obstructions in the way of access to it, by his unsecured creditors, that is sufficient at once to visit the instrument with condemnation, as tending to hinder, delay, and defraud his creditors.

"Looking at the provisions of this conveyance, we find them very peculiar. Here is a deed which purports to be a deed of trust or mortgage. It is a blanket mortgage, which covers everything which

the grantors own everywhere, and the whole indebtedness covers every piece of property in every jurisdiction. The equity of redemption in any one part of that property, any specific part of it, is absolutely valueless, because it is subject to incumbrances to the amount of four or eight million dollars, the amount of claims which were funded and are represented by the notes issued under the deed of trust. Nobody would purchase an equity of redemption in any specific part of this property subject to such an encumbrance as that; so that no creditor could have any relief through a sale of the mere equity of redemption in any part of this property. There is no manner in which a creditor could have relief except by having the whole property sold free of incumbrance, the debts paid and the surplus appropriated to the satisfaction of unsecured debts. But if this deed stands good, this property never can be sold except at the option of 20 per cent. in amount of the creditors who have chosen to come in under its provisions.

"It provides that notes shall be issued to the creditors who assent to this arrangement, bearing interest at 7 3-10 per cent., payable semiannually, the interest to be compounded semiannually when the instalment is in arrears. A sale can be made only in case one-fifth of the creditors shall request it in writing, after the maturity of these notes, which run three years. So that these creditors have a pretty good thing of it, or may have, if the management of that property results in the payment of 7 3-10 per cent. interest per annum, and they may let it run on indefinitely. Four-fifths of the creditors, or rather creditors representing debts amounting to a single dollar in excess of four-fifths of this indebtedness, may protract this arrangement as long as they choose.

It is at their option, and they may keep all other creditors not assenting out of all access to this residuary interest. This is an artificial obstruction added to the intrinsic difficulty of getting at property scattered through so many jurisdictions.

"But that is not all. It is provided that the trustee may carry on the business, and shall not be responsible for any losses; the losses, in other words, will come out of the estate. So that not only is the equity of redemption covered up and placed beyond the reach of the creditors, but it is also exposed to the risks of a continuation of this business. It seems to be a very cunningly devised contrivance for enabling the creditor [debtor] in person, or his trustees, to conduct the business and keep the creditors off, so that he may have the chance at some time in the future of retrieving his fortunes, while at the same time the creditors are exposed to the risk of further loss and disaster. I think the statement is made that the running of the mills did continue for eight years, and there was nothing to prevent their going on indefinitely if it was successful and if a trifle more in amount than four-fifths of the creditors choose to continue. The consequence is, that the unsecured creditors are completely under their control, and if they have any remedy at all it is postponed indefinitely by those disposed to continue the risk, and vanishes into thin air. That is the case if we treat this as a mortgage. We can hardly imagine an instrument which can more effectually hinder and delay these unsecured creditors who did not come in under the deed and who desire to have a prompt collection of their debts.

"But if we look upon it as an assignment, and especially if we consider it in connection with the last

deed of 1874, which was, in form, an assignment and which simply conveys the property on the same trusts, it is still more manifestly vicious, because of the enforced conditions of delay which are imposed on the creditors who come in to get the benefit of these deeds. They are not to have the benefit of the property at all, unless they will at once consent to a delay of three years. All the creditors who do not assent to the conditions are excluded entirely, and then there is a reservation of the surplus for the benefit of the grantor himself. These are features of an assignment, made professedly for the benefit of creditors, which condemn it as fraudulent and void.

"Now, this is the view which we take as to the character of these deeds, looking at them simply in the light of general principles, and we find that the decisions of the highest court of Connecticut and of the District of the United States in that State concur with us in that view. I read an extract from the opinion of the Court of Errors of Connecticut. That Court says: —

"'But the deed (of Nov. 1, 1873) contains other features which impart to it a fraudulent character, and render it void as a mortgage of real estate in this State as against non-assenting creditors. It empowers the defendant Chafee, as trustee, and any person who may succeed him in the trust, under its provisions, to run and operate the mills and print works of the A. & W. Sprague Manufacturing Company at the expense of this trust-estate, and for the benefit of A. & W. Sprague, Amasa Sprague, and William Sprague, and of their creditors, as well as of the Manufacturing Company and their creditors,

for a period of time limited only by the trustee's discretion, unless one-fifth in amount of the holders of the notes issued and outstanding under the deed intervene, and request him in writing to dispose by sale of the estates. The effect, therefore, of this power, if executed, and losses be sustained in its execution, would be to enlarge the encumbrance upon the trust-estates and diminish the value of the only property or interest to which the non-assenting creditors could resort to obtain satisfaction of their claims — that is, the equity of redemption in the mortgaged premises.'

"If profits should be made in the execution of the power, they would inure to the benefit of the assenting creditors of the Spragues, as well as of the assenting creditors of the company. The non-assenting creditors would thus be hindered, delayed, and defrauded.

Stafford National Bank *v.* Sprague, 17 Federal Reporter, pp. 791–2.

Shipman J. says

"The mortgage-deeds and assignments, taken together, attempt to convey the entire title of the grantors in the conveyed property to a trustee for the benefit of the creditors of the corporation, and of Amasa and William Sprague, individually and as a copartnership, and of the other stockholders, giving a preference to those who should, within nine months from Nov. 1, 1873, extend the time for the payment of their debts for three years from Jan. 1, 1874. The trustee is authorized to run either or all of the mills or print-works which belonged to the corporation, or to allow the grantor to run the same, the profits being receivable by the grantee, and the expenses to be chargeable to the trust-fund. Thus the property,

which was a fund for the payment of debts, having been placed beyond the reach of non-assenting creditors, is further subjected, for an indefinite time, to the hazard of the losses resulting from the running of the mills, and the manufacturimg expenses are chargeable to the entire fund, as well as that derived from the individual property of the Spragues as from the corporate property. The intent of the mortgage and the assignments was not only by a set of conveyances professedly for the benefit of all the creditors, to put the entire estate into the hands of a trustee for a period not necessarily definite and determined, but also to subject the property against the will of non-assenting creditors, for a like indefinite time, to the hazards of a business exceedingly extensive, and of uncertain pecuniary profit. 'No debtor has a right thus to postpone or put in peril the rights of his creditors without their consent, and a conveyance which attempts so to do, or which is executed for the purpose of depriving creditors of their right to enforce their just claims against the property of their debtor by placing it beyond their reach or control for an unlimited, indefinite, or uncertain period, is, in conscience, as well as in law, fraudulent.' — *De-Wolf* v. *Sprague Manufacturing Co., supra.*

"This legally fraudulent character is apparent upon the face of the deeds, and parol evidence is of no avail that both the grantors and the majority of the creditors thought that the arrangement was for the best interest of all the creditors, and that the experiment would be a success, because neither the grantors nor a majority of the creditors have a legal right, in an assignment for the benefit of all the creditors, to subject the property of the assignor for an indefinite time to the hazards of enterprises which are not only far more extensive than those incidental

to the winding up of the business, but are a continuation of the business of the debtors to its full extent. The cases which justify the carrying on of a manufacturing business by a trustee until the stock is exhausted, or the purchase of new materials to enable the stock to be worked up, have no analogy to this case, in which the deeds contemplated the carrying on by the trustee of a vast business. Notwithstanding the motive of the debtors and the assenting creditors was not tinged with bad faith, the deeds were of such a character that the law pronounces them to be fraudulent towards non-assenting creditors, and refuses to lend its aid to the coercion which would compel them to enter into a business which they disapproved."

In the case of Gardiner *v.* The Commercial Bank, 13th R.I., p. 1., the same deed of assignment passed upon by the court in Illinois was decided by the Rhode Island Supreme Court, Durfee, Chief Justice, including Justices Matteson and Stiness, who sat therein, to be wholly void as against non-assenting creditors, under the Statute of Elizabeth.

This decision was Dec. 18, 1880, four years before the decision of Austin and Sprague. Neither of those justices dissented from that decision, or the grounds upon which it was based. The court says: —

Durfee C J says

"In Gardiner *v* Commercial National Bank, *ubi supra*, the validity of this assignment was litigated before the Supreme Court of Illinois, and the court held it to be invalid under the laws of that State, because it appeared on the face to have been made

not simply for the benefit of the creditors, but to secure an advantage to the assignors, namely, to prevent a sacrifice of their property. We cannot resist the belief that the conclusion of the Supreme Court of Illinois, in regard to the purposes of the assignment, was correct, and this being so, the assignment is, in our opinion, as invalid under the laws of this State as it was under the laws of Illinois. See case as above cited."

These two cases so completely cover some of the most patent defects of the trust-deed of November first, which go so far beyond those in the document then before the court, that we believe we might rely upon them as wholly *in pari materia* in our favor.

We suppose it will not be contested that it is a well-settled principle of equity that if a court has jurisdiction of a case for one purpose, it will retain it for all purposes, and grant such relief as the parties show themselves entitled to receive.

1st Story's Equity Jurisprudence, Sec. 699.
Downs *v.* Bristol, 41 Conn., 274.

We suppose another principle of law equally well settled is, that

"A deed containing provisions contrary to a statute is void *in toto*, and with reason, for intent to defraud may be shown by one unlawful provision as clearly as by many. The court cannot avoid the condition on which a man voluntarily parts with his property, and uphold the conditional conveyance as an absolute one or annex conditions of its own inventions."

Hyslop *v.* Clark, 14 John, 458.

Mussey *v.* Noyes, 26 Vermont (3 Deane), 472.
Farnum *v.* Hempstead, 6 Hill, 458.

Where an instrument is good in part and fraudulent in part, it is void altogether, and no interest passes under the part which is good.

Bump, Fraudulent Conveyances, 366.

A deed void in part is entirely void, the court holding that a mortgage deed executed with a fraudulent intent was totally void, and would not be regarded in equity as a valid security for any purpose.

Weeden *v.* Hawes, 10th Conn., 50.

"In these cases it was decided that whenever the legal effect of any proposition of the assignment is to defraud the creditors of the assignor, the whole assignment is void. And that where an assignment in trust to sell for the benefit of the creditors is coupled with other express trusts not authorized by law, the conveyance is inoperative, and will not transfer the title in the assigned property to the trustees."

All of the courts, save two judges in Rhode Island, which have passed upon this deed, have decided that some provisions of the trust-deed are void as against non-assenting creditors, and therefore apparently have omitted to notice others. The propositions which I have submitted will render the deed wholly void in every point from reason of each decision.

There has been such wealth of learning exhibited, such cogency of reasoning, and such clearness of

argument and directness of decision in these cases that it will be only a show of learning and repetition which would be tedious, therefore, to the court as well as counsel to cite the many and many cases which could be collected in support of the several principles upon which these decisions turn.

I ask leave, however, to call attention to some considerations in regard to the trust-deed which were not brought out in the cases before these courts sustained by facts which were probably not known to the parties in those cases and which our record clearly sets up.

In Austin *v.* Sprague much argument is had upon the proposition that unless it is shown by the deed itself that the purpose and intent with which it was made was to actually defraud creditors, that such a deed may be sustained by showing that such intent did not in fact exist.

We assume an entirely different ground.

We believe that the Statute of Elizabeth avoids anything as a fraud which hinders or delays creditors in availing themselves of due process of law to secure their debts, however benevolent the debtor's intention is in hindering and delaying them for their own good.

It is said in Austin *v.* Sprague, as a controlling fact, that a majority of the creditors advised this performance. Be it so. If this paper contrivance in fact prevents a small minority of creditors from levying according to the laws of the State of Rhode Island, and of many other States where this vast and varied property was situated, and from collecting

debts by due process of law, such advising or consenting of creditors can have no effect upon the rights of those who did not assent. The minority had as much right to dissent from, as the majority had right to assent to and advise a proceeding by a debtor, by which the minority of the creditors should be hindered and delayed.

Much stress is put upon the fact that the mills would have been obliged to stop if attachments had been put on, and that the property would have deteriorated. The practical answer to this suggestion is, that on December 4, three days after Chafee got his deed, a meeting was called of the Sprague Manufacturing Company "to take into consideration the propriety of making a contract with the Quidnick Company to supply this company with stock to run its mills and convert the cloths into prints, by executing a lease of the mills and works of this company, or otherwise to obtain the assistance of said Quidnick Company for a satisfactory consideration *in putting the mills and works of this company in operation.*" (Rec., p. 399, 400.)

So that it seems the mills did stop as soon as Chafee got his deed.

The testimony of Amasa Sprague admits that they failed to meet their commercial paper on the 16th of October. (Rec., p. 179.)

The first deed of assignment, which fell through, was authorized by the A. & W. Sprague Manufacturing Company (Rec., p. 396) to Rufus Waterman, James Y. Smith, and Henry Howard, trustees, to secure the notes of the A. & W. Sprague Manu-

facturing Company in payment of the debts of the company *only*, not the debts of the A. & W. Sprague copartnership, or the debts of the other stockholders who joined in making the subsequent deed, "to the amount of $12,000,000 to be delivered by the treasurer to the trustees, to be used by them in funding the outstanding debts and liabilities of the company."

Then there was delay until Nov. 28, 1873 (Rec., p. 397), when "the execution of a deed of mortgage to certain other trustees, to wit, Rufus Waterman, Amos D. Lockwood, and George C. Nightingale to secure the payment of the notes of the company to the amount of $14,000,000," was voted by the A. & W. Sprague Manufacturing Company.

This deed was not accepted by the trustees therein named, because of their doubt as to the effect of the bankrupt laws upon it, and their own personal liability. This deed so authorized, was in form substantially the paper afterwards held by Chafee, ~~and~~ which made an issue of $2,000,000 more notes than the first deed; and the notes were devoted to the payment not only of the debts of the Company, but the debts of the copartnership, and the debts of the other stockholders, the signers who joined in it.

This decision of the non-acceptance of the trustees was notified to the assignors on the 29th of November.

The Spragues and their counsel, on the evening of Sunday, the 30th of November, met the trustees, and asked them to reconsider their refusal to accept the deed, and, after considerable discussion and persua-

sion, the trustees promised to go to Boston and consult two gentlemen learned in the law, to wit, Judge Benjamin F. Thomas and the Hon. Henry W. Paine, and try to follow their opinion in that regard. The trustees, as soon as convenient, and on the morning of the 2d of December, started on their errand to Boston, and were notified that the night before a deed of trust had been made to Chafee, a person of whom neither had heard of in that relation. (See testimony of William ~~T~~ King, Rec., pp. 462–465, and Payne, Rec., pp. 482–483. App., p. 192.) 198

Now, during that time, and prior to the authorization of the first deed, a committee of the creditors had reported that the entire liabilities of the A. & W. Sprague Manufacturing Company were $11,475.44, and their assets $19,495,247 (Rec., p. 454, App., p. .), making a surplus of more than $8,000,000 in the property of the Spragues, the committee making deduction in every item of the account for depreciations where the committee thought it requisite.

Zechariah Chafee testifies, May 17, 1884, more than ten years after he had taken possession of the property (Rec., p. 534), as follows: —

"*Int. 16.* What amount and number of creditors came in under the trust-mortgage deed of Nov. 1, A.D. 1873, and accepted the trust-mortgage note secured thereby?

"*Ans.* Four hundred and forty-nine creditors, to the amount of $8,717,450.

"*Int. 17.* Have the grantors fulfilled the conditions of said trust-mortgage deed; if not, to what extent

have they fulfilled them, and how far have they failed to fulfil them?

"*Ans.* There has been paid on the mortgage note two years' interest to the 1st of January, 1876, and ten per cent. on the principal only, which was paid by me as trustee, February, 1883. These payments were made to all holders of notes who called for it.

"*Int. 18.* Will all the estate, real and personal, which passed under said trust-mortgage deed, be sufficient to pay the debts secured by said trust mortgage?

"*Ans.* It will not.

"*Int. 19.* Whether or not you have already sold a large portion of said property?

"*Ans.* I have; most of the real estate in Rhode Island and the principal part of that in Maine.

"*Int. 20.* Whether or not the proceeds thereof, together with what can possibly be derived from the remaining portion of said estate, will be sufficient for the payment of said debts?

"*Ans.* It will not."

The court will see further that the actual assenting indebtment which Chafee acknowledges was due from the A. & W. Sprague copartnership, Hoyt, Sprague, & Co., copartnership and the A. & W. Sprague Manufacturing Company, that came within his knowledge, was $8,717,450, for which he exchanged the mortgage notes. If to this amount be added $114,000, the amount of the non-assenting indebtedness, as stated by Chafee, the whole amount of the indebtedness that Chafee knew anything about would be $8,831,450.

Chafee testifies. (Rec., p. 329.)

"*Cross-Int. 7.* Did all the creditors accept the

provisions of the trust-deed, and become parties thereto; and if not, what amount did not come in under it?

"*Ans.* About $114,000 of the Bank of Commerce of New York was the principal one, as appeared by the books as direct creditors."

Deducting from the amount of indebtment reported by the committee of creditors, to wit	$11,475,443
the total amount of indebtedness stated by Chafee as we have seen . .	8,831,450
We find that there was an unaccounted for balance of debts	$2,643,993
which is, so far as Chafee is concerned, still outstanding.	
The court will also see that while the amount of mortgage notes issued was	$14,000,000
The total amount of the indebtedness as given by Chafee is only . . .	8,831,450
Leaving a balance of trust notes of . still unaccounted for.	$5,168,550

Observe the difference between the assets of the Spragues and the entire payments by Chafee, made to their creditors up to February, 1883. Their assets, as reported by the committee of the creditors, at available value, because they were examining in order to ascertain the competency of

these securities for an advance of $1,000,000 as a loan to the company, in addition to their liabilities, as we have seen, amounted to . . . $19,495,247

The payments entire made by Chafee were one instalment on the principal of the notes exchanged of ten per cent., that is to say, $871,745, and to payments of interest to the first of January of 1876, at seven and three-tenths interest, $1,352,747, adding $114,000 as his payments to the National Bank of Commerce, and other outside creditors, and we have a total paid 2,238,492

subtracting the payments from the assets, we have a $17,256,765

deficit wholly unaccounted for of $17,256,765, and he had held the property almost ten years.

It may be claimed that the assets were of such a character that the shrinkage would account for this enormous deficit.

The report of the committee of creditors (Rec., p. 450, App. p.) shows that the private property of the stockholders of the corporation was to be held liable for the debts of the company, as follows: —

" The firm of A. & W. Sprague, both members of which are stockholders in this corporation, has assets as follows: —

1,654 shares First National Bank, Providence $165,400

500 shares Second National Bank, Providence	50,000
2,164 shares Quidnick Co., at 374	809,336
215 shares Washington & Georgetown R.R. Co., at 70	15,050
1,855 shares Kennebec Land and Lumber Co., at 100	185,500
7 shares R.I. Horse-shoe Co.	700
200 shares R.I. Safe Deposit Co. (total 500)	20,000
Kennebec Land and Lumber Co., account	18,587
Real estate in Maine (lumber land)	20,000
Columbia Water Power Co.	116,000
Bills receivable	80,500
Coburn Land Co. (400,000 acres)	1,457,000
Interest in four schooners	23,000
	$2,961,073

Add to this the individual property of Mrs. Fanny Sprague, who owed no debts: —

802 shares Quidnick Co.	$300,000	
One-third homestead estate and life-interest in balance, fee of thirds being in A. & W. (total value reckoned here)	125,000	
House on Young Orchard avenue and lots on Pitman street	60,000	
Bank stocks	10,000	
		495,000

And add also the individual property of Mrs. Mary Sprague, who owed no debts: —		
601 shares Quidnick Co. .	$228,140	
Homestead estate . .	100,000	
Bank stocks . . .	100,000	
		428,140
And assets of Amasa Sprague: —		
Ladd Farm, Warwick, 180 acres with houses and other buildings . .		75,000
And also assets of William Sprague: —		
Washington Estate . .	$130,000	
Land and houses, Peace st., Providence, (40,000 ft.),	25,000	
Hoyt children: —		
816 shares Quidnick Co. .	305,184	
Due from Wm. Sprague, guardian (his bondsman being held) . .	250,000	
		680,184
Also add to this the cash assets of A. & W. Sprague Manufacturing Company: —		
Augusta, Me., estate . .	$1,200,000	
Bank and other stocks (after striking out a large amount as worthless or of doubtful value) .	1;044,000	
Real estate in Cranston and elsewhere (upon basis of 2¼ cts. per foot in Cranston, and moderate valuations elsewhere) . .	3,615,500	
		$5,859,500

So that there were assets to the amount of . . . . . $10,498,897"

without disturbing the mills of A. & W. Sprague Manufacturing Company at all, all of which might have been disposed of in sixty days by an honest and efficient trustee. Certainly as much as would have ~~proved~~ paid the Manufacturing Company's "direct" debts ascertained to be $8,833,450.

Now, the only dividends and payments to which Chafee has testified amount in the aggregate to $2,228,492.70. Therefore he could have made dividends and payments of nearly five times that amount out of the property within 90 days, without disturbing the manufactories of Rhode Island.

Chafee further testifies that he made a contract with the Quidnick Company to carry on the manufacturing business for the A. & W. Sprague Manufacturing Company, which they had theretofore carried on, and that he did such manufacturing business up to August, 1881, to the amount of $29,802,286.10. (Rec., p. 352.)

"*Cross-Int. 45.* For how many years after you accepted the trust did you continue to purchase materials, manufacture it, and sell the profit?

"*Ans.* The material was not all purchased by me; they were done with my consent. The chemicals and drugs mostly were purchased by Amasa Sprague. We all acted in concert. Mill supplies, excepting cotton, were purchased by Mr. Brown; the cotton mostly purchased by myself. All the goods for the store were purchased by Mr. Coleman. This continued about seven years.

"*Cross-Int. 46.* Whose money was employed to carry on this operation?

"*Ans.* The business was done in the name of the Quidnick Company. The Quidnick Company's credit was used. In some instances I gave my individual name for obligations for the interest of the concern.

"*Cross-Int. 62.* Can you state the amount of manufacturing business done by yourself as trustee from the time you commenced until August, 1881?

"*Ans.* $29,802,286.10. (Rec., p. 355)."

The Quidnick Mills were entirely in the possession of and under the control of the Spragues.

The court may well think that this is a very bald statement of the administration of this trust.

We agree to that most fully, but it was not our fault, but our misfortune. We tried to get the accounts in detail so as to show the court exactly how Chafee could account for the loss of this vast amount of property, the discrepancy in the amount of liabilities and the reason why he paid so little, and how much, if anything, he had with which to pay more. Therefore, in cross-examination we put to him the following questions which he answered as will appear. (Rec., p. 354): —

" *Cross-Int. 54.* State whose separate indebtedness were included in the trust-mortgage notes issued by you, and the amount of the indebtedness of each?

Ans. The A. & W. Sprague Manufacturing Company, A. & W. Sprague, Amasa Sprague, William Sprague.

"*Further Ans.* I decline to answer the latter part of that question, to wit ("and the amount of the indebtedness of each") on account of the great labor involved in answering it, unless directed to do so by the court, being *advised* that it is entirely immaterial to this case.

"*Cross-Int. 55.* State the amount of the indebtedness of the A. & W. Sprague Manufacturing Company, and whether or not that indebtedness, or any part of the same — and if so, what part — was incurred, advances or loans of money or credit given to other corporations in which the A. & W. Sprague Manufacturing Corporation, the A. & W. Sprague Copartnership Company, or the Spragues, or either of them, was stockholders, and to what corporations. State the business of the corporations to which the money was so loaned, advanced, or credit given, and for what purpose the loan, advance, or credit, was made?

"*Ans.* I decline to answer that question on account of the great labor involved in answering it, unless directed to do so by the court, being advised that it is entirely immaterial to this case.

"*Cross-Int. 71.* (Rec., p. 356.) Will you make and annex to this deposition a list of the so-called trust property sold or exchanged by you from the commencement of your trust down to the time of the pretended sale of the estate in question, together with the dates of sale and the amounts realized from said sales, setting opposite these amounts of sales the value of the property sold as appraised by the committee of creditors above referred to in this deposition?

"*Ans.* I decline to answer that question on account of the great labor involved in aswering it, unless directed to do so by the court, being *advised* that it is entirely immaterial to this case.

"*Cross-Int. 72.* State for what class of indebtedness you issued the trust-mortgage notes as collateral, and the amount of the notes so issued as collateral?

"*Ans.* I decline to answer that question on account of the great labor involved in answering it, unless directed to do so by the court, being *advised* that it is entirely immaterial to this case."

Thereupon, on surrendering the witness for reëxamination, the following entry is made: —

"A. B. Patton, Esq., insists that the questions which Mr. Chafee has declined to answer be answered by him notwithstanding." (Rec., p. 357.)

On p. 359 of the Record will be found the following entry by the examiner: —

"In the Circuit Court, Friday, Jan. 11, 1884, upon motion by Andrew B. Patton, Esq., for a rule requiring said Zachariah Chafee to answer Cross-Ints. 54, 55, 71, and 72, his Honor Le Baron B. Colt denied the motion, as will more fully appear by reference to the files on said Colt." (This is the only entry that can be found upon the Record on this subject.) Nothing more appears on the "files."

Chafee also testified (Rec., p. 354) as follows: —

"*Cross-Int. 59.* Did you in your capacity as trustee incur new debts and extend old ones?

"*Ans.* Don't recollect of any particular instance, but if I did it was for the interest of the business.

"*Cross-Int. 60.* You do not understand my question. Were not all the trust notes extension of old debts, and in carrying on the manufacturing business did you not daily incur new debts and pay them?

"*Ans.* The trust notes were given in settlement of old notes or liabilities. In carrying on the daily business, it was done mostly in the name of the Quidnick Company, and if any purchases were made for the A. & W. Sprague Manufacturing Company by me as trustee, they were paid.

"*Cross-Int. 65.* State whether or not you have paid to any one claims at par in cash instead of giving them the trust notes. I mean creditors who refused to accept the trust notes.

"*Ans.* I think, as far as I can recollect, there was one party I paid a small debt. He threatened bankruptcy, and under advice of counsel I paid it. We were doing a fair business, and we thought on account of the interruption we had better pay it.

"*Cross-Int. 67.* Was the individual indebtedness of William Sprague and of Amasa Sprague, and the firm indebtedness of A. & W. Sprague included in the trust notes?

"*Ans.* I issued the trust notes to their creditors.

"*Cross-Int. 68.* Were any of the trust notes issued to any of the creditors of the A. & W. Sprague Manufacturing Company after the 21st of July, A.D. 1874?

"*Ans.* There was no direct issue of trust notes after that date. There were some debts settled by trust notes borrowed from the Quidnick Company.

"*Cross-Int. 69.* Please to state what debts were settled after Aug. 1, 1874, by taking trust mortgage notes, who were the debtors, the amount of the debts, and the date of the settlement.

"*Ans.* On Nov. 25, 1874, gave for A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co. . . $2,500

Jan. 18, 1875, gave on A. & W. Sprague Manufacturing Company interest account

to Wm. Sprague, guardian of Byron Sprague's children	550
Gave, Jan. 29, 1875, on A. & W. Sprague Manufacturing Company draft on Wight & Tillinghast	10,000
Jan. 30, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co.	5,000
Feb. 25, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co.	10,000
March 3, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co.	5,000
March 29, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co.	5,000
April 24, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co.	10,000
May 14, 1875, gave on A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co.	5,000
May 28, 1875, gave W. H. Jackson & Co., for William Sprague account . . .	750
May 31, 1875, A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co.	5,000
Aug. 20, 1875, A. & W. Sprague Manufacturing Company guarantee of balance due on E. C. Gallup's note	47,950
Sept. 12, 1875, for A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co.	5,000
Jan. 18, 1876, A. & W. Sprague Manufacturing Company draft on Hoyt, Sprague, & Co.	5,000

March 27, 1876, A. & W. Sprague Manufacturing Company endorsement, and Amasa Sprague for benefit of A. & W. Sprague Manufacturing Company .	5,000
Jan. 26, 1876, gave Mason, Dawley, Wheaton, & Co., for one error in bill of July 29, 1870.	200
Total	$121,950"

All the foregoing were settled by the aforesáid mortgage notes which were borrowed as aforesaid from said Quidnick Company prior to Aug. 1, 1874, in settlement of its debt.

"*Cross-Int. 70.* How were the notes above referred to paid to the Quidnick Company?

"*Ans.* By returning the same amount in mortgage notes which *had been regularly issued prior to Aug. 1, 1874.*"

We give some testimony which preceded and followed the questions which Chafee declined to answer in order that the court may see how material those questions are to enable a full examination of the provisions of the trust deed. We have shown $17,350,754.30 of the property unaccounted for. We have shown that there were cash assets more than four times the payments of interest and dividends on the principal of trust notes, and we have shown that $5,168,550 of the notes are unaccounted for. We have shown that Chafee, the treasurer of the Quidnick Company, used to borrow the trust notes of that company to pay the debts of non-assenting creditors with.

"These notes were placed in the hands of the trustee to be by him used and applied to the payment or retiring of such of the present outstanding indebtedness and liabilities aforesaid as the holders thereof shall, *within* nine months from the date of these presents, bring in and surrender and discharge or agree to extend, for the term, and according to the provisions of said notes." (Rec., p. 11.)

Record, p. 357, Chafee testifies as follows: —

"*Cross-Int. 73.* Who paid for and out of what fund was the money paid to make the purchase of the title derived from the National Bank of Commerce, of New York, which is vested in Messrs. Kimball, Robinson, & Jackson?

"*Ans.* I, as trustee, paid for that title with the trust estate fund, by order of the creditors held at a creditors' meeting."

It is thus seen that Chafee had paid out the trust notes to non-assenting creditors to a large amount. They must have been non-assenting, because he did not take up the notes and draft, in case of the Bank of Commerce. We see that as treasurer of the Quidnick Company he borrowed of it notes which had been paid to that company by him as trustee for the amount of the indebtment of the A. & W. Sprague Manufacturing Company to the Quidnick Company, which we find from the report of the creditors (Rec., p. 450) was $307,000; that then as treasurer of the Quidnick Company he paid non-assenting creditors of the A. & W. Sprague Company by borrowing those notes. He bought the claim of the

National Bank of Commerce, of New York, of $118,000 with those borrowed notes, and then paid the Quidnick Company as he swears with notes regularly issued before Aug. 1, 1874.

Would it not be desirable to know, and will the court not want to know, by what right Chafee could issue *regularly* any notes prior to August, 1874, except to assenting creditors, and how he managed to borrow those notes from assenting creditors to repay the Quidnick Company for the notes that it had loaned to Chafee to buy the Bank of Commerce claim? Such a transaction we cannot understand. He further swears, in answer to questions asked him, as follows: —

"*Cross-Int. 72.* State for what class of indebtedness you issue the trust mortgage notes as collateral and the amount of the notes so issued as collateral.

"*Ans.* I decline to answer that question *on account of the great labor involved in answering it.*"

What does this sworn testimony mean except that so much, so great amounts, and in so many instances the trust notes had been issued *as collateral* for some classes of indebtedness, either his own or that of the grantors, that it will be too great labor to ascertain those facts.

The court below sustained him in that answer, and refused to require him to give the information desired, but give no grounds for so doing.

Therefore, the case stands in this posture: The trustee under this deed has issued so many of the notes which were given him to be used only for the

purpose for which the trust was made, for other and illegal uses, such as collateral security for his own or other's debts, that it will be so great labor to tell how many, that he is excused from answering.

That is, a court of equity will not compel a trustee to answer to the creditors for whom he is indirectly trustee for the surplus, what he has done with the trust notes which he might be called to account for; and also is not required to tell how much of the trust property he has sold and what he has done with the proceeds.

We submit it is a principle of the practice of equity law to hold that when a trustee declines to answer as to the execution of his trust in any particular, it is a badge of fraud.

We see by this testimony the trustee stands in this position: He has sold, or otherwise disposed of, all the personal property of the A. & W. Sprague Manufacturing Company, so that he has none in his hands or possession, directly or indirectly, Dec. 21, 1875, when he made that affidavit to prevent its attachment (Rec., pp. 487–488). The committee of creditors have found that in 1873, just before he took possession of the property, the company had claims for: —

Cash advanced to other companies .	$982,000
Personal manufacturing property in various mills and print-works, including prints and goods in store . .	1,750,000
Cash on hand	180,000
Bills receivable (considered good) .	60,000
Accounts receivable (considered good),	240,000

Morgan mill estate	50,000
City of Augusta bonds . . .	57,000
Land in Kansas and elsewhere, costing $124,000, estimated at . .	50,000
Thus we have assets amounting to .	$3,369,000
which could have been readily converted into cash, and which, together with the amount we have before stated,	10,498,897
makes a total of	$13,867,897

Now, what has become of all this property? We have already seen that Chafee says it has been substantially all sold, and yet accounts for no return up to the time of giving his testimony, which was last given in 1884. The court, in Austin *v.* Sprague, relies upon this state of things as showing that the creditors' advice, in having this trust deed made, was good. What says this court to that proposition?

In all these transactions both assignors and assignees contemplated the bankruptcy law, and made twice over conveyances to Chafee for the purpose of getting rid of that law.

I agree that it has been decided by this court that acts and fraudulent proceedings in view of the bankrupt law cannot be taken advantage of as against the debtor, except by the assignee; but here we are dealing, not with the debtors, but with the proceedings of the debtors and their assignee, to see whether they were in good faith or fraudulent as to their creditors.

For the first time have acts of bankruptcy by debtors in conveying their property been set up as

an evidence of good faith toward their creditors and as a justification of such act.

Suppose on this thirty-first day of October, when the mills were stopping, their paper had gone to protest more than fourteen days before, an act of bankruptcy clearly, the Spragues by a voluntary act had gone into bankruptcy, three proper assignees had been appointed, and under the stringent and efficient provisions of this law this estate had been wound up as would have been done substantially within two years at the furthest, for no long and tedious cases of litigation would have made their appearance in that event. Would not this estate have left, as William Sprague says it would, if it had been properly managed, nearly two dollars for one of its debts?

Again, in Austin *v.* Sprague it is claimed that the great numbers of creditors who are supposed to have assented to this transaction has a tendency to show good faith and to rebut any inference of fraud.

These creditors were very few for such an estate. They were scattered almost all over the United States. A large portion of them were in New York, and the only large creditor in New York that we hear of, the Bank of Commerce, did not assent. How many of them could have been at these meetings of creditors? How many of them all at last, when all came in and took their notes, and Chafee says they were all but two of the creditors of the A. & W. Sprague Manufacturing Company, were there? There were only four hundred and forty-nine creditors. (Rec., p. 534.)

"*Int. 16.* What amount and number of creditors came in under the trust mortgage deed of Nov. 1, A.D., 1873, and accepted the trust mortgage notes secured thereby?

"*Ans.* Four hundred and forty-nine creditors, to the amount of $8,717,450."

With only 449 creditors, will the court have the kindness to consider why it was necessary for the A. & W. Sprague Manufacturing Company to have executed 16,500 negotiable promissory notes, all bearing even dates with these presents, and made payable to the order of A. & W. Sprague, and by them endorsed, bearing interest at seven and three-tenths per cent., annually, until the principal sum is paid, whether at or after maturity, and all instalments of interest in arrear to bear interest at the rate aforesaid till paid. . . . . Said notes being of the amount and lettered and numbered as follows, to wit: 2,000 thereof for $50 each, lettered A No. 1 to A No. 2,000, both inclusive; 3,000 thereof for $100, lettered B No. 1 to B 3,000, both inclusive; 3,000 thereof for $200 each, lettered C No. 1 to C No. 3,000, both inclusive; 3,000 thereof for $500 each, lettered D No. 1 to D No. 3,000, both inclusive; 4,000 thereof for $1,000 each, lettered E No. 1 to E No. 4,000, both inclusive; and 1,500 thereof for $5,000, lettered F No. 1 to F No. 1,500, both inclusive, and all of which notes have been placed in the hands of said party of the second part, to be by him used and applied to the payment or retiring of such of the present outstanding indebtedness and liabilities aforesaid, as the holders thereof shall, within nine months from date, etc.

What possible use was there for 16,500 notes, of denominations from $50 to $5,000 each, to 449 creditors? And not only was seven and three-tenths interest to be paid on the notes, but if the interest was unpaid, that should bear the same rate, the interest thus compounded until paid.

Does the court not perceive why two millions of those notes in addition to any possible indebtment of the Spragues were made, and what a speculation it was for somebody in buying up these small notes when issued? Were they not to carry on this business and pay the help with, for the future long space of time, as the deeds provide, during which it should be carried on? What better investment could any man make than in those notes if they looked at the immense property of the Spragues, — more than $19,000,000? If the $50 and $100 notes, 5,000 in number, were issued to the operatives of the Sprague mills to pay their past or future accruing wages, what an awful swindle this was upon those poor laboring men when Chafee only paid one instalment of 10 per cent. on the notes, and the interest for two years during ten years. Were not the creditors right when they asked that Chafee should be restrained in the Circuit Court of the United States from trafficking in these notes, as they shall hereafter see they did?

I desire further to call the attention of the court as bearing on the validity of the deed, to the mixing of the assets and the mingling of the payments of sev-

eral classes of creditors of different firms and individuals indiscriminately from the proceeds of the property of the A. & W. Sprague Manufacturing Company. Afterwards, Hoyt, Sprague, & Co. became insolvent. They were thought to be solvent at the time of these transactions.

All of the creditors of that company that chose to present their claims, as we have seen, *supra*, to a very large amount, were permitted to receive the trust notes, although such claims came only from a secondary liability against William Sprague and Amasa Sprague as members of that firm.

All of the creditors of the co-partnership of A. & W. Sprague, all of the creditors of the individual members of that firm and the stockholders were paid from these notes.

Now, we submit whether we are called upon to argue the question whether a deed of a manufacturing company which postpones a portion of its own creditors and conveys its property to a trustee to pay very many other classes of creditors of co-partnerships and individuals can be sustained in law, if there were no other reasons for attacking the validity of the conveyances.

And so, in reverse, can the property of the A. & W. Sprague co-partnership be taken away from the partnership creditors and go to pay the debt of the Manufacturing Company or the debt of Hoyt, Sprague, & Co., or the individual debt of the partners on equal footing?

It is a very significant fact that so far as this record shows, while the debts of Hoyt, Sprague, &

Co. were brought in and received their portion of these assets after the failure, no portion of the assets of Hoyt, Sprague, & Co. were ever put into the fund out of which their debts were paid.

Will not the court find difficulty in this deed in its want of marshalling of the debts of these several assignors and the neglect to marshall or collect the assets according to the rights of the different parties?

In Austin *v.* Sprague, the court says: —

"Of course the property of one cannot be taken from his creditors to pay the debt of another. It appears, however, in this case, that there was a most remarkable confusion in the affairs of the grantors. The business was carried on by the corporation; some of its property stood in individual names, while some of the individual property stood in the name of the corporation; payments had been made by each on account of the other quite indiscriminately; the individual indebtedness was very small, and that of the co-partnership was chiefly on account of indorsement of the corporation notes."

Be it so, as it was not, specially after the insolvency of Hoyt, Sprague, & Co. When all these several concerns became insolvent, under any law for the proper distribution of the property of those insolvent, should not the assets have been so marshalled as to give to each what legally belonged to him in the condition that his claim stood in relation to the claims of all? To this proposition the court in Austin *v.* Sprague

answers that in that case the creditor having a debt against the corporation did not suffer harm by the turning in of the balance of the private debts or corporate debts. Be that true; but how did this court know that fact in the absence of all accounts?

Yet what is the character of the deed that permits and authorizes such results to be worked out under it? Is it a deed that can be sustained by a court of law or a court of equity? Given, the reason for not holding the deed void on that account, in the opinion, ceases as regards Randolph. His claim is against different parties, individual and corporate, and if he had taken the trust notes and assented to the deed, he would have thereby given up his claims against other parties and their property which, under proper administration, would have paid his whole debt.

There is another badge of fraud about these transactions to which I beg leave to call the attention of the court, because it has not been considered in the other cases. The total liability of the Spragues was reported by the committee to be $11,475,443, and no more accrued after that. Indeed, when determined, they were only $8,831,450. On the 31st of October a deed was authorized to be made to the three trustees then selected by the creditors, a mortgage of $12,000,000 to secure the debts and liabilities of the corporation only. What was the exact form of the deed we do not know, except in so far as has been stated, because it was only a rough draft which has not been produced.

That might have been a very proper deed and the $12,000,000 was not so much in excess of the $11,-

475,443 as to cause remark or suspicion; but no other debt after occurring, on the twenty-eighth day of November and the first of December a mortgage or trust deed and notes were authorized for $14,000,000. What was the addition of more than $2,000,000 for? Why was that large sum added? Because the scheme was then concocted not to have a pure mortgage, but to put all the property beyond the reach of the creditors and to have notes enough to do the business which they authorized Chafee to carry on, and which he did carry on for seven years, with the Spragues managing it as they did before, and he won't tell us how many of those $2,000,000 of notes were used as collateral security for carrying on that business, although he so swears as to some, and the rest so many that it would be great labor to tell us all.

If the deed of trust had stopped at $12,000,000 as the first mortgage authorized, then the difference between that and the amount of the indebtedness as reported by the committee of creditors would have been so small that the notes might all have been exchanged with assenting creditors coming in at once, and no capital would have been left or security upon which money could have been raised. But by adding the $2,000,000, thus making the notes $14,000,000 in the deed to Chafee, the $2,000,000 used as collateral would give credit to himself and the Quidnick Company in running the mills for ten years, Chafee being its treasurer.

I agree that this case in regard to Chafee has been very carefully managed. It has been over and over said that he was the choice of the creditors, and to

prove that he calls Mr. William J. King as a witness, and the following questions were put to him by Mr. Chafee's counsel (Rec., p. 463): —

"*Int. 39.* Whether or not you, in your individual capacity or as chairman of the committee, made any objection to the appointment of Mr. Chafee as trustee?

"*Ans.* No, sir; I did not.

"*Int. 40.* Whether or not any members of the committee made any such objection, either to you or to the officers of the corporation, within your knowledge?

"*Ans.* No, sir."

See how a word or two of cross-examination dispels that theory thus attempted to be proved! (Rec., p. 464)—

"*Cross-Int. 48.* State whether or not the committee of which you are a member were consulted in regard to the appointment of Mr. Chafee as trustee, before the execution of the trust deed?

"*Ans.* They were not.

"*Cross-Int. 49.* Are you a party to a suit or bill in equity brought by a large number of the creditors in the A. & W. Sprague Manufacturing Company to remove Mr. Chafee from his trust?

"*Ans.* No, sir.

"*Re-Direct Int. 50.* Do you recollect whether or not the committee of creditors published a card in relation to Mr. Chafee's appointment?

Ans. I do not recollect.

The court will permit me to cite the case of Latham *v.* Chafee, before the Circuit Court of the

United States in Rhode Island, Federal Reporter, pp. 520–525, as it has a bearing upon two points in this case.

First, as to whether the pendency of a suit in equity in a State court can be pleaded in abatement or bar of a like suit involving the same subject matter, and between the same parties, in a Federal court, which was decided after elaborate consideration, and the citation of authorities in the negative, as this court has said is in accordance "with the great weight of authorities," and that that rule of law was applicable in a court of equity upon a petition by creditors to remove a trustee.

In the same case a motion for injunction upon the trustee was had, and for the appointment of a receiver upon an allegation that Chafee was purchasing and selling the trust notes. Upon that part of the case the court ordered with respect to the traffic in the trust note as follows:—

"We are of the opinion that the trustee should be enjoined from purchasing or selling the same until further order of this court."

This case was heard in 1881. The court will see that there might have been another reason why Chafee managed to continue this business for his own profit, and run down the value of the notes so that he could speculate in their purchase and sale.

The Effect of the Four Assignments of April 6, 1874

We now beg leave to claim the attention of the court to the four deeds of assignment in trust, dated April 6, 1874, which in several of their provisions have been decided by the learned courts whose decisions we have quoted setting aside the conveyance of November 1 as invalid, and perhaps we should content ourselves with those decisions. But there are one or two considerations outside of what those courts examined to which we will address ourselves.

The trust deed of November, as we have seen, contains the following provisions (Rec., pp. 11, 12): —

"Now, therefore, said parties of the first part [the A. & W. Sprague Manufacturing Company, Wm. Sprague, Amasa Sprague, and the A. & W. copartnership], in consideration of the premises and of the trusts hereinafter declared, and in further consideration of one dollar to them paid by said party of the second part, do hereby give, grant, bargain, sell, and convey unto the said party of the second part, his heirs, executors, administrators, and assigns, all the property, real, personal, and mixed, not exempt from attachment by law, which the parties of the first part or any or either of them have and hold."

It then describes certain properties specifically, and concludes with this clause: —

"And also all other the estate and property, real and personal, of every name and nature, not exempt from attachment by law, wherever situate and by

whatsoever muniments of title evidenced, which any or either of the parties of the first part have or may be entitled to in possession or action, reversion or remainder, together with all goods, stocks, and supplies, manufactured, unmanufactured, and in process of manufacture, and all fixtures, machinery,tools, and other personal property of every kind which said A. & W. Sprague Manufacturing Company may at any time, or from time to time hereafter have, either in lieu of or in addition to those now on hand, but excepting from this conveyance all shares of capital stock in any and every corporation, wherever located, belonging to any or either of the parties of the first part, the same to be transferred to said party of the second part, upon his request in writing, by way of pledge and collateral security, to secure the performance of the conditions of this instrument." With a proper *habendum*, etc.

Everything of property of the grantors, real or personal, was thereby conveyed, so that nothing remained in the grantors, with the exception of a possible right to redeem the corporate stocks held by the grantors from a mortgage of $14,000,000. The deeds of assignment of April 6, 1874, are identical *mutatis mutandis*, and they

"In consideration of the sum of one dollar to them paid, grant, assign, bargain, sell, alien, release, and '*confirm*' unto the said Zechariah Chafee, his heirs, executors, administrators, and assigns, all their right, title, and interest, legal or equitable, in or to all the property of the grantors described or referred to in the trust deed of mortgage, dated on the first day of November, 1873, made by the grantors to the grantee, in or to any and all estate, real, personal, or mixed,

of every name and nature, wherever situate, not exempt from attachment by law," with a proper *habendum*. (Rec., p. 75.)

The first question which strikes one is, are not all these deeds, whether of Nov. 1, 1873, or the four of April 6, 1874, if they convey anything, valid as between the grantors and grantee, whatever may be their validity as to third parties as against the Statutes of Elizabeth?

Bump on Fraudulent Conveyances, p. 442, *et seq.*, lays down the rule: —

"A fraudulent transfer is good as against the grantor, his heirs, executors, administrators, agents, parties claiming under him, and his vendees and grantees. . . . The title of a fraudulent grantee is not only good against the debtor, but it is also good against all parties except creditors."

We are relieved from further discussion of this proposition as regards these deeds, so far as the laws of Rhode Island are concerned, because the case of Gardner *v.* The Commercial Bank, *supra*, decided them.

The court, Durfee, C.J., says: —

"Previous to the enactment of Chap. 723 [passed June Session, 1878], it was settled that an assignment or other conveyance, invalid as to creditors, because made to hinder, delay, or defraud them, was nevertheless valid as between the parties to it, and as against everybody except creditors and *bona fide* purchasers for value."

Bean *v.* Smith, 2 Mason, 252, 274.

Randall *v.* Phillips, 3 Mason, 378, 388.
Porter *v.* Williams and Clark, 9 N. Y., 142.
Brownell *v.* Curtis, 10 Paige, 210, 211.
Chapin *v.* Pease, 10 Conn., 69.
Maiders *v.* Culver's Assignees, 1 Dug., 164.

It follows, of course, under the law as it existed previous to the enactment of Chap. 723, that the assignees under the earlier assignment, when they accepted that assignment, took all the property which the assignors had to assign, except what was exempt from attachment, to be held by them upon the trusts declared in the assignment, and consequently that they could acquire no new title to that property under the later assignments. The whole effect of the later assignments would be to pass property afterwards acquired, or which, being previously acquired, had afterwards become attachable, or which might accrue to the assignors as a resulting surplus under the earlier assignments." *See authorities quoted.*

It would seem, therefore, that as the Spragues had nothing to convey, and as Chafee had nothing more to get by these deeds, they were very harmless performances in everything which relates to the rights of the creditors; in that regard, they left everything in the condition it was before they were made.

It is to be observed that if we regard these deeds, as we must do, as deeds " of further assurance " covenanted for in the trust deed, because they " release and confirm " the titles of the trust deed, then the provisions must be held to be a part of that deed, to

be construed with it. Their provisions make that deed more onerous upon non-assenting creditors, and more objectionable as giving rights and privileges to the grantors and exempting the trustee from liability, and extending the time in which their property shall be kept from their creditors, than do the correlative provisions of the trust deed. The deeds say:—

"In trust, to sell the same at public or private sale, and convert the same into money, and the proceeds thereof to apply,—

"First, to the payment in full, if sufficient, otherwise ratably, of all the claims against us (the Spragues) which have or shall, within nine months from the first day of November, 1873, be brought in and extended for the term of time provided in said trust mortgage, with authority in said trustee to make earlier payments than in three years' time of a part or the whole of the same, under the provisions of the said deed of mortgage, dated Nov. 1, 1873, or of this or any other preceding instrument."

This provision requires all the creditors to come in within nine months, or they are to receive no payment whatever of their debt. This takes away the only characteristic that the trust deed ever had as a mortgage for the benefit of non-assenting creditors, because they are coerced to come in within nine months to get anything. Indeed, what is called the defeasance of the mortgage makes the redemption possible only by the payment in full of the mortgage debts.

The next provision is that the residue of such pro-

ceeds to apply in full, if sufficient, otherwise ratably, to the payments of all our other creditors.

The next provision is that the trustee shall sell and dispose of any or all portions of the property conveyed to him by or under this agreement, or any previous trust, from time to time, as soon as reasonably may be.

That obliterates the provision of the trust deed that twenty per cent. of the creditors may at any time require a sale, leaving it wholly to the discretion of the trustee.

The next provision is still more onerous: In Austin *v.* Sprague, the court held that the provisions for running the mill was only what the law would imply, giving proper time to wind up the business. But the business had then been in the hands of the trustee more than five months, and this provision was that he should hold and run the mills as long as he chose, or allow the grantors to run the same, or any part thereof; and in case the same are run by him, or anybody else, he shall not be liable, personally, for expense or loss arising therefrom, but the same shall be chargeable to the trust fund vested in him.

Can it be thought that a deed made by grantors to their trustee, that he shall run their business as long as he chooses, or suffer the grantors to run that business as long as they choose, and then that he shall be responsible for no losses or defaults the grantors may make, or that he may make, whether they are made by his own wilful default or fraud, or the grantors' wilful default or negligence, or otherwise, the trustee shall not be liable, but the same shall be chargeable

to the trust fund vested in him, is a provision that never has been, and we respectfully submit never will be, sustained in any deed of assignment or mortgage in trust in the nature of an assignment, by any court.

A very curious question of importance is raised by the condition of the liabilities of the Spragues under the laws of Rhode Island, which, so far as we are advised, never has been called to the attention of any court which has had this deed under consideration, nor are we enlightened by any authority upon it, if any, either in England or in the State courts of this country, because it arises only under the Statutes of Rhode Island, the charter and peculiar acts and doings of the Sprague Manufacturing Company, its stockholders and creditors.

The General Stat. of Rhode Island, Chap. 142, Sect. 14 (see App. p. 469), provides that the whole amount of the debts which any such corporation shall at any time owe SHALL NOT EXCEED THE AMOUNT of its capital stock actually paid in, and in case of any excess the directors under whose administration it shall happen shall be jointly and severally liable to the extent of such excess for all the debts of the company then existing, and for all that shall be contracted as long as they shall respectively continue in office, and until the debts shall be reduced to the amount of the capital stock of such company paid in. This provision applies to the Sprague Manufacturing Company, as it was in force at the time of the organization of that company.

The capital stock of the Sprague Manufacturing

Company was fixed at one million dollars, actually paid in, but no regard seems to have been given at any time to this provision, and, as we have seen, its debts at the time of the authorization of the mortgage deed of October 31, 1873, exceeded eight millions of dollars, and its debts had for years greatly been in excess of the sum of its capital stock.

The first question which presents itself is, whether the company could owe any debts in excess of that amount in defiance of the express inhibition of the statute permitting its existence. Several cases have been presented to the courts as to whether claims illegally and irregularly authorized by the officers of the company could be collected from the property of the company, and the decisions of the courts have not always been uniform. The doctrine of *ultra vires* has been frequently applied.

How will the court hold under this section where the *vires* is not only *ultra*, but actually taken away by law from the corporation to do such act? Specially where the same statutes provide a remedy for the party aggrieved, making the directors jointly and severally liable for debts so contracted, and requiring public notice to be given so that whoever deals with a manufacturing company in Rhode Island shall know by public law that if his claim is in excess of the capital of the company, it is the debt of the directors.

By Sect. 11 (App. p. 119), the company is required to file in the town clerk's office of the town where the manufactory is established, annually, on or before the fifteenth day of February, a certificate signed by

a majority of the directors, truly stating the amount of its capital stock actually paid in, the value as last assessed for a town tax on its real estate, the value of its personal assets, and the amount of its debts and liabilities on the thirty-first day of December of the year next preceding.

Section 18 provides: "If any certificate made, or any public notice given, in pursuance of the provisions of this chapter, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted whilst they were stockholders or officers thereof."

The court will observe that the other stockholders are excepted from that liability, so that it is not provided that all stockholders of the company shall be liable at all events for all such debts.

Section 19 (App. p.). The act provides that when the officers of any manufacturing company shall be liable by the provisions of this chapter to pay any of the debts of the company, any person to whom they may be so liable may have an action on the case against one or more of the officers, and the declaration shall state the claim against the company (not debt) and the ground on which the plaintiff expects to charge the defendant personally, and such action may be brought notwithstanding the pendency of an action against the company for the claim or demand, and both actions may be prosecuted until the plaintiff obtains payment.

It will be observed that the statute makes a claim in excess of the capital stock a distinct separate cause of action against the offending officers, but nowhere enacts that such claim shall be a debt of the company; but on the contrary when it provides, as it does in section 23 (App. p. 170.) that any officer of the company who shall pay any debts of the company under the provisions of this chapter may recover the amount so paid against the company for money paid for their use in which case, the property of the company only shall be taken and not that of any stockholder.

It will be observed further that this provision is in favor of officers who are made liable for not filing certificates or otherwise doing their duty, but all the other provisions are as to directors *only*.

The provisions of this chapter are unique so far as we are advised. These questions in the form they arise under the Statutes of Rhode Island cannot be presented under the statutes of any other State, authorizing the organization of manufacturing corporations. We are left without aid from the decisions of the courts in Rhode Island as we find no decisions there, even indirectly, bearing on the question whether an excess of claimed indebtment beyond the capital stock is a debt against the company in spite of the statute which enacts that it shall not exist.

We do not care, however, to discuss that question further, but come to what may be a more important question arising in the case at bar, whether, under the provisions of the statutes, the person and property

of the shareholders shall be liable for this excess of debt? specially, whether the stockholder can be said to owe the debt before it has been judicially ascertained that such debt exists or can exist by some form of judicial determination.

To illustrate the position which we maintain, that the stockholder does not owe any such debt, let us suppose an attempt to have a stockholder declared a bankrupt as being an insolvent person, and the only evidence before the commission is that the supposed insolvent is a stockholder in a corporation like the one we are considering and the claims upon it largely exceeded its capital stock; admitting an act of bankruptcy, does this prove insolvency, so that a decree of bankruptcy would be justified?

We see that the statute forbids the company to owe any such debt. We see that a special remedy is given to the claimant thereof against the class of officers, the directors, who have brought this burden upon the company against the provisions of the law.

Why should the entirely innocent stockholder be held equally guilty with the offending officers in a like penalty, for what the company cannot do by law, and the officers are punished for doing, but only in a like penalty. §

The liability of any stockholder for the debts of a corporation is a statute liability only.

Whitman *v.* Cox, 26 Me., 335.
Slee *v.* Bloom, 19 Johns, 456.

The claims of an honest creditor for such excess is to be favored because he is innocent, and he may

have, possibly, an equitable claim against the company because of his good faith and innocence in its contraction. Why will not the like good faith and innocence of the stockholder in the same matter reach as far in exempting them. ?

We have seen that the statute does not hold the stockholder to any contribution to the officer who pays this demand, because clearly it is in the nature of a penalty.

If we are right, let us apply the condition of the affairs of the Sprague Company to the case at bar. The defendants make claim against the stock of Fanny and Mary Sprague, because they were their creditors. The case finds, *ubique*, that Fanny and Mary Sprague from the beginning owed no debts and had no creditors at the time of the execution of the trust deed save those of a secondary character arising from their being liable as stockholders for the debts of the A. & W. Sprague Manufacturing Company. The burden of proof, then, is upon the defendants to prove such liability, which they do not do, and which Fanny and Mary have not acknowledged so far as the defendants are concerned.

Let the defendants prove their liability. Their only claim of proof must be "because the company owed debts on the fifteenth of February, 1873, which these ladies were bound to pay because they did not file a certificate in the proper office, and the several statute steps requisite to relieve them from liability. Let them prove it. Their duty is to establish that fact, and get a judicial determination of it in their favor before they can set it up here.

Perhaps we might stop there; but if there can be any state of facts which shows or tends to show that they are not liable, then the defendants' case is not proven. Suppose, as the fact undoubtedly was, as is shown by the Report of the Committee, that the company owed only commercial paper, and that they had been carrying in their business a large amount, several millions of such paper payable at short dates, for many years. The panic of 1873 did not increase their indebtment, but only crippled their means of raising money to carry it. Assume for the illustration that the company owed on the fifteenth day of February, $3,000,000, contracted before the thirty-first of December, 1873. If we are right, the company thereafterwards could contract or owe no new debts, because their debts were already in excess of their capital stock, for which their stockholders would be liable individually. Assume that the commercial debts, and none other are shown in the record of longer date than four months, had been paid. Then could these ladies be liable for any subsequent or precedent debt? If we are right in our view of the law, they could not. The debts prior to the fifteenth of February had all been paid by the company which had the benefit of them; of course there could be no claim on the ladies for those so paid, and we submit that none could be contracted by the company, owing more than a million all the time, afterwards, for which these ladies would be liable.

This outside the question whether there must not be a judicial determination of the fact that the company owed the debt before they can be charged

secondarily and collaterally with certainty, thus being liable. All this supposed liability of these ladies as stockholders is admitted to be secondary, and therefore can be made primary in the manner prescribed by the statute, and in no other.

By the statute only their liability is made primary after a judgment against the company, or by a bill in equity. There were and have been no judgments against the company shown upon this record except by non-assenting creditors several years afterwards, of which the plaintiff was one. It is true that a provision of the statute permits an execution against the company for a debt to be levied upon the persons and property of stockholders; but the very judgment on which the execution is issued against the company determined that question, if the party levied on is a stockholder, and he who levies does so at his peril as to the truth of that fact.

To hold these parties or their property, the defendants must make good their claim by competent proof in a proper court, as they have not done in this court, that these ladies owed any "debts," or were in any way indebted to anybody.

There is another consideration in this regard to be submitted to the court.

The directors of this company had clearly rendered themselves liable, upon the facts abundantly proved, to this whole debt of eight millions of dollars, and they held a majority of the stock. Can they throw off this burden from themselves when it becomes unbearable by making any sort of conveyance of the property of the company, and thus to relieve

themselves from their statute liability? Can the Spragues put all their partnership property into hotch-pot and beyond the reach of their partnership creditors to aid in accomplishing this end? Nay, can they, being insolvent, put their individual property beyond the reach of their private creditors for the purpose of relieving themselves from its penalty? For illustration, suppose a debtor is under a penalty, and he conveys all his property in trust to a party to pay that penalty, he taking what is left, will such a transaction as that stand the scrutiny of the law? and without pursuing this topic further, was not the transactions of Nov. 1, 1873, exactly the case supposed?

It will be remembered that the trust deed of November 1, excepts from its operation all capital stocks owned by the grantors in any corporation, and that such stocks are to be transferred to the trustee upon his request. This is claimed to have been done.

The four deeds of April 6, 1874, by the A. & W. Sprague Manufacturing Company and the A. & W. Sprague Copartnership, Amasa Sprague, and William Sprague (there are no deeds from Mary and Fanny), will convey whatever rights in equity to redeem those stocks, if any, that remain in the grantors of these four deeds to Chafee, assuming the deeds should not be void in themselves, or as a part, in fact, of the trust deed and to be construed as a part of it.

We submit several considerations showing that these deeds cannot operate to transfer those stocks: —

1. If the transfer of those stocks as collateral have

been made "on his request in writing" to Chafee, then either under the General Law or the charters of the several companies, he is not an owner of the shares entitled to vote and act upon them; that power, without anything farther, would remain in the grantors so transferring their stock pledged as collateral security and no default having been claimed.

Indeed, the Record shows, so far as the A. & W. Sprague Manufacturing Company was concerned, the assignors remained members, and a part of them officers, of that corporation. As to the Quidnick Company, William Sprague remained as president down to 1883.

The charter of the A. & W. Sprague Manufacturing Company and that of the Quidnick Company, which is identical in words, and even in date, provides as follows: (App., p.). App. p. 170

Thus it is seen that restrictions by law in the charters, every share of such stocks had a lien upon it by the company for all debts due the company by the stockholder, and the A. & W. Sprague Company primarily owed the Quidnick Company $307,000, and no transfer could be made by the A. & W. Sprague Manufacturing Company, or by William or Amasa Sprague as they were liable for that debt, as directors, until those debts were paid.

Again, no share could be sold by the stockholder, for any price, until ten days' notice had been given to the company of the price he would sell it for, and a refusal was, by law, given in the company to buy the stock at that price. The Record shows no such

notice was given at any time by any of these parties, to any company, of the intention to make such sales, and the price asked, in any case set forth in this Record, and certainly it is not pretended that any such refusal was given, either when the shares of the company were attempted to be transferred as collateral, and still more certainly no such refusal was given after or before these four deeds of April 6th.

In case of a transfer as collateral, either to secure the performance of covenants in the trust deed of November 1, or for the payment of that trust mortgage, we do not see how a refusal could have been given to the company whose stock was so transferred, such as the statute requires; that refusal must have been, if given, to buy the stock at many, many thousand dollars, so that it would appear that the charter intended that there should be no power of transfer of such stock as collateral or otherwise save as therein provided; certainly not, in so far as to make the pledgee a member of the company.

This view will be very much strengthened when we contemplate the situation of affairs when these two charters were made. The whole property of the elder Spragues, ~~Byron~~ Arnaud and William, was held jointly in the nature of a partnership. After their decease, and their property was divided, these two companies were organized, and the distribution of the derivative shares of the heirs or devisees were all put into the two companies. The part of their many thousands put into the Quidnick Company was intended to have been adjusted in such form as to make provision for the future of all those, certainly, who did not intend

to carry on business affairs; so the Quidnick Company never had, from the date of its charter and organization, any debt, nor did any of its stockholders, save William and Amasa, to comparatively small amount, transact any business, and of the eight millions of securities issued by the Spragues there was no piece of paper extant of the Quidnick Company, nor any of its stockholders, save William, except such secondary liabilities as arose by reason of their being members of the Sprague Manufacturing Company. All meant to keep this property, received from their ancestors, in the family wholly, and to have no stock in any way sold except to themselves; therefore these carefully drawn provisions, which were sanctioned by the Legislature, and enacted as parts of the organic law of the said companies.

There was, therefore, no way in which their stock could be otherwise sold, except by due process of law, brought by a creditor against a stockholder, and then they had the option of paying that debt, and holding the property intact to themselves.

The statute provides shares shall be transferable on the surrender of the old certificates upon the books of said corporation, in such form and manner as said corporation shall prescribe. In all these transfers no surrender of the old certificates were made. The by-laws, Rec. p. 407: "Sec. 7. Transfers of stock may be made on the books of the corporation, and signed by the holder or his attorney, on the surrender of the old certificate, etc."

If we are right, how could any stock be sold in disregard of these enactments by the Legislature and

the corporations? We see but two possible answers which can be made to our propositions. That these refusals as to the transfers are set out in the Record, that the company might have waived them, and that if the officers entered any transfers upon the books, that would be a waiver. Our reply to that is, that a matter of such importance could not be waived except by the direct action of the company at a meeting of its directors or of its stockholders. We think the last only would be effectual. Suffice it to say there is no evidence of any such waiver.

However that may be, in regard to other transfers of stocks, either as collateral or otherwise, there is no evidence showing any transfer of the stocks claimed in this bill, and that is as far as we need to go in this part of our case.

As to the deeds of April 6th, there is nothing that shows that they ever were recorded on the books of the company. No mention is made in these deeds of any intent to transfer these stocks so as to put either of these companies on notice. No entries were made on the books of the company of such transfer of these stocks, and no certificates were issued, or old certificates surrendered. Indeed, Chafee never held any certificates of these stocks; none was ever delivered to him at any time.

Amasa Sprague testifies that all the certificates remained in the safe of the company precisely as they had been deposited for safe keeping there years before, and that as to the transfers upon the books, they were only there for the purpose that to the grantee if they were attached as in his possession the

transfer could be shown, if they were attached as the property of the trustee, need not be shown by taking out of the book a certificate of transfer, it could be shown that they were not in his possession See Amasa Sprague's testimony (Rec. p. 180. Int. 35. App. p.). In this he is confirmed by Chafee, from the fact that Chafee swears by his affidavit (Rec. p. 488. App.), that he had no property of the A. & W. Sprague Manufacturing Company, in his possession, either directly or indirectly, on the ~~thirty~~ first of December, 1875, while the whole evidence shows, and he does not contradict this, that the stock of the Quidnick Company, belonging to the A. & W. Sprague Manufacturing Company and other stocks of the company were then in his possession.

But why discuss the invalidity of these deeds farther? Their fraudulent purposes, the impossiblity of their action in conveying any title, legal or equitable, or their binding force and effect upon any property, real, personal, or mixed, have been completely adjudicated by this court in the case of Means *v.* Dowd, reported in the 128 U. S. Reports, p. 273, that the citation of it be hardly necessary.

The conclusion would seem to be inevitable that the title to the shares attached and levied upon by the plaintiff, having passed to him through such levies by operation of law, and the transfers of the stock having been duly made to him, and the certificates therefor having been delivered to him by the legal holders, and the pretended deeds, assignment and transfers of all rights in said stock are void, then the

judgment of the court will be that the plaintiff has title to the property in the shares so levied on by him.

Respectfully submitted,

BENJAMIN. F. BUTLER,
O. D. BARRETT,
of Counsel.

NOTE. — In preparing this brief we have had much assistance from the admirable brief of Messrs. Ratcliffe Hicks and Jeremiah Halsey, counsel for complainant in the case Stafford National Bank *v.* Amasa Sprague *et als.*, in the Circuit Court of the United States for the District of Connecticut, where most of the questions are elaborately and learnedly argued. We should have been further aided by it, but for the decisions of the courts made upon these deeds since that argument.

APPENDIX.

Statute 13 Eliz., Chap. 5.

"For the avoiding and abolishing of feigned, covinous, and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements as of goods and chattels, more commonly used and practised in these days than hath been seen or heard of heretofore; which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions have been and are devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose, and intent to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining, and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued.

"II. Be it therefore declared, ordained, and enacted by the authority of this present Parliament, that all and every feoffment, gift, grant, alienation, bargain, and conveyance of lands, tenements, hereditaments, goods, and chattels, or any of them, or of any lease, rent, common, or other profit or charge out of the same lands, tenements, hereditaments, goods, and chattels, or any of them, by writing, or otherwise; and all and every bond, suit, judgment, and execution at any time had or made since the beginning of the Queen's Majesty's reign that now is, or at any time hereafter to be had or made,

to or for any intent or purpose before declared or expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators, and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs, by such guileful, covinous, or fraudulent devices and practices as is aforesaid, are, shall, or might be in any wise disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate, and of none effect, any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding."

(Gen. Stats. R.I., p. 349, Chap. 162.)

SECTION 1. Every gift, grant, or conveyance of land, tenements, hereditaments, goods, or chattels, or of any rent, interest, or profit out of the same by writing or otherwise, and every note, bill, bond, contract, suit, judgment, or execution, had or made and contrived of fraud, covin, collusion, or guile, to the intent or purpose to delay, hinder, or defraud creditors of their just and lawful actions, debts, suits, accounts, damages, or just demands of what nature soever, or to deceive or defraud those who shall purchase *bona fide* the same lands, tenements, hereditaments, goods, or chattels, or any rent, interest, or profit out of them, shall be henceforth deemed and taken as against such person or persons, his, her, or their heirs, successors, executors, administrators, or assigns, and every of them, whose debts, suits, demands, estates, rights, or interests by such guileful and covinous devices and practices as aforesaid shall or may be in any wise injured, disturbed, hindered, delayed, or defrauded, to be clearly and utterly void, any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

SECT. 2. A deed of bargain and sale, of lease and release, covenant to stand seized to an use, or operating by way of covenant to stand seized to an use, or any other deed signed,

sealed, delivered, and acknowledged by the party having good and lawful right and authority to the possession, shall transfer the possession of the bargainor, releasor, grantor, or covenantor to the bargainor, releasee, grantee, or person entitled to the use of the estate or interest which such person hath or shall have in the use, without livery of seizin, or any other act or ceremony whatever.

SECT. 3. No estate of inheritance or freehold, or for a term exceeding one year, in lands or tenements shall be conveyed from one to another by deed, unless the same be in writing, signed, sealed, and delivered by the party making the same, and acknowledged before a senator, judge, justice of the peace, notary public, or town clerk by the party or parties who shall have sealed or delivered it. . . . And such conveyance shall be recorded, or lodged to be recorded, in the office of the town clerk of the town where the said lands or tenements lie.

SECT. 4. All bargains, sales, and other conveyances whatsoever of any lands, tenements, or hereditaments, whether they be made for passing any estate of freehold or inheritance, or for term of years exceeding the term of one year, and all deeds of trust and mortgages whatsoever, which shall hereafter be made and executed, shall be void unless they shall be acknowledged and recorded as aforesaid; *provided*, that the same, between the parties and their heirs, shall nevertheless be valid and binding.

(General Stats. of R.I., p. 356, Chap. 165.)

SECT. 9. No mortgage of personal property hereafter made shall be valid against any other person than the parties thereto, unless possession of the mortgaged property be delivered to and retained by the mortgagee, or unless the said mortgage be recorded in the office of the clerk of the town where the mortgagor shall reside, if in this State, and if not, where the property is at the time of making the same.

(Pub. Stats. R.I., Chap. 237, pp. 657, 658.)

SECTION 1. The Supreme Court may, upon the petition of any creditor interested in a deed of assignment made by a debtor for the benefit of creditors, upon due notice and for cause shown, by summary order, require the assignee named in such deed to render on oath to said Court an inventory of the effects, estates, and credits conveyed by such deed, so far as the same can be ascertained, and to give bond with sufficient surety or sureties to the satisfaction of said Court for the faithful performance of the trusts of such deed.

SECT. 2. . . . . .

SECT. 3. The Supreme Court shall, upon the petition of any creditor interested in any deed of assignment made by a debtor for the benefit of creditors, upon due notice and for cause shown, remove any assignee named in such deed of assignment who shall neglect to render an inventory and schedule as required by this chapter, or shall neglect to give a bond as required by said Court, and may, upon the petition of a majority in interest of the creditors interested in any such deed of assignment, upon due notice and for cause shown, remove the assignee named therein from his office and trust.

SECT. 4. In case of such removal of an assignee, said Court shall appoint one or more suitable persons to receive, take, and recover all the effects, estates, and credits conveyed in such deed of assignment, and the same to hold and dispose of for the uses, intents, and purposes set forth in such deed of assignment, which person or persons so appointed shall, by operation of law, have and enjoy all the rights and estates and be subject to all the duties, liabilities, and responsibilities that appertain by virtue of such deed of assignment to the assignee removed.

(General Statutes of Rhode Island, Chap. 142.)

SECT. 11. Every manufacturing company included within the provisions of this chapter shall file in the town clerk's office of the town where the manufactory is established, annually

on or before the fifteenth day of February, a certificate signed by a majority of the directors, truly stating the amount of its capital stock actually paid in, the value as last assessed for a town tax of its real estate, the value of its personal assets, and the amount of its debts or liabilities on the thirty-first day of December of the year next preceding.

SECT. 12. If any of such companies shall fail so to do, all the stockholders of such company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such notice shall be given, unless such company shall have become insolvent and assigned its property in trust for the benefit of its creditors, in which case the obligation to give such notice by the filing of such certificate shall cease.

. . . . . .

SECT. 14. The whole amount of the debts which any such corporation shall at any time owe shall not exceed the amount of its capital stock actually paid in; and in case of any excess the directors under whose administration it shall happen shall be jointly and severally liable, to the extent of such excess, for all the debts of the company then existing, and for all that shall be contracted, as long as they shall respectively continue in office, and until the debts shall be reduced to the amount of the capital stock of such company paid in.

. . . . . .

SECT. 20. Whenever the stockholders of any manufacturing company shall be liable, by the provisions of this chapter, to pay the debts of such company, or any part thereof, their persons and property may be taken therefor on any writ of attachment or execution issued against the company for such debt, in the same manner as on writs and executions issued against them for their individual debts.

SECT. 21. The person to whom said officers or stockholders may render themselves liable, as aforesaid, may, instead of the proceedings aforementioned, have his remedy against said

officers or stockholders by a bill in equity in the Supreme Court.

SECT. 22. Any stockholder who shall, whether voluntarily or by compulsion, pay any debt of the company for which he is made liable by the provisions of this chapter, may recover the amount so paid in an action on the case against the company; in which action the property of the company only shall be liable to be taken, and not the person or property of any stockholder of the company; or, the person who shall have so paid such debt of the company may proceed in the Supreme Court in Equity for contribution against any one or more of the stockholders who were originally liable with him for the payment of said debt, and may recover against each of them their just and equitable proportion thereof.

SECT. 23. Any officer of a manufacturing company who shall pay any debt of the company for which he is made liable by the provisions of this chapter may recover the amount so paid in an action against the company for money paid for their use, in which action the property of the company only shall be liable to be taken, and not the person or property of the stockholder.

Extracts from Charter of the Quidnick Manufacturing Company and A. & W. Sprague Manufacturing Company.

SECT. 3. The par value of the shares in said corporation is hereby fixed at the sum of one hundred dollars each, and said shares are hereby declared to be personal property, and shall be transferable on the surrender of the old certificates upon the books of said corporation in such form and manner as said corporations shall prescribe: Provided, however, That no stockholder in said corporation shall have the right to transfer his shares therein without first giving ten days' notice in writing of such intention and ten days' refusal thereof to said corporation at the lowest price at which he will sell to any other person,

and if in such case said corporation elect to purchase said shares at said lowest price, such stockholder shall, on the price being offered to him, convey said shares to said corporation. Said corporation shall issue certificates of said shares to the owners thereof, which shall be signed by the president and countersigned by the secretary of said corporation, and shall be recorded in a book provided for that purpose."

"SECT. 9. The stock or share of each and every stockholder shall at all times be pledged and liable to said corporation for all debts and demands due or owing from such stockholder to said corporation, whether the same are overdue or due and payable at a future day, and whether the same shall arise from assessments or instalments or from any other contract or dealing originally made and had with said corporation; and in case the proprietor of any share or shares shall neglect or refuse to pay such debt or demand to said corporation within twenty days after the same becomes due and payable, or in case there be no fixed day of payment within twenty days after demand for payment in writing, then and in such case said corporation is hereby empowered to sell at public auction so many shares, but not fractions thereof, of such delinquent proprietor as will produce sufficient to pay and discharge all such debts and demands of said corporation and all incidental expenses, first giving notice in one of the public newspapers printed in the city of Providence of the time and place of such sale at least twice a week for two entire weeks before said sale, and upon such sale said corporation is hereby authorized to issue certificates thereof to the purchaser at such sale in the form and manner by which said shares are transferable by the regulations of said corporation, and such sale and transfer shall vest in such purchaser the legal title to said shares so sold, and upon such sale said corporation is authorized to receive from such purchaser the amount the same may be sold for and to apply and appropriate all or so much thereof as may be necessary to the payment of all such debts and demands as may be

due or owing from such delinquent stockholder to said corporation and all incidental expenses of such sale; and in case the proceeds of such sale be more than sufficient to pay all such debts and demands due or owing from such stockholders to said corporation, and the incidental expenses of such sale, then the surplus shall be paid over to the said stockholder; but in case the proceeds of such sale be not sufficient to pay all such debts and demands so due or owing to said corporation from such delinquent stockholder, then and in such case said corporation may have their action against such stockholder for the balance so remaining unpaid."

THE DESIGN OF THE TRUST DEED WAS TO HINDER AND DELAY CREDITORS IN THE COLLECTION OF THEIR JUST CLAIMS.

This evident from the face of the deed.

It is also evident from the evidence in this suit taken of the parties to the trust deed.

AMASA SPRAGUE testifies as follows: (R., p. 422):—

Int. 10. State what was then done in reference to the making of the deed by the Spragues and the creditors.

Ans. The trustees did not accept, and it run on until the first day of December following. Then Hopkins and Pomroy, being creditors, came to the office and notified me that they proposed to put on an attachment, as there was nothing being done. I told them to wait until morning, and the probability was the trustees would accept. They concluded to wait. Then I went to Mr. Thurston (between 4 and 5 o'clock in the afternoon of the 1st of December) and told him what Hopkins and Pomroy proposed to do, and he said the thing must be fixed someway or other that night. . . . They sent for Mr. Chafee (that is, the legal gentlemen), after looking the matter over, knowing if there warn't something done that night we should be all

covered over with attachments next morning; and Mr. Chafee said that he would accept the trust. Then the deeds had been made out and executed to Lockwood, Nightingale, and Waterman, and their names were erased and Mr. Chafee's inserted, and on the acknowledgment the twenty-eighth day of November was scratched out and the first day of December inserted. . . . After the deeds were complete Mr. Martin, the notary, was sent for. He arrived, I should judge, somewhere about 1 o'clock, but he took no new acknowledgment. Mr. Thurston and Mr. Gardner questioned the legality of the deed, and Mr. Thurston remarked that he hadn't any time to do it any differently, for it must be on record to-morrow morning before 9 o'clock. If it warn't, we should all be covered over with attachments.

Int. 12. State whether or not this arrangement was made for the purpose and with the view to deprive the creditors of obtaining their claims against the estate by the ordinary legal processes and of delaying them from obtaining their claims against the estate for the period of three years.

Ans. Yes; it was all done for that purpose — for delay.

Int. 13. State whether or not you expected by this arrangement that the debts of the company would be paid and the property preserved to a greater or less extent for the benefit of the parties making the deed.

Ans. Yes, sir; that's so.

Int. 14. State whether or not there had been a meeting of the stockholders of the company, which authorized you as treasurer of the company to execute this deed to Chafee prior to Dec. 1, 1873.

Ans. No, sir; I never had any authority.

AMASA SPRAGUE further testifies in relation to the transfer of stock of the Quidnick Company to Chafee as follows (R., p. 180): —

Int. 35. For what purpose was this transfer, or pretended

transfer, of said Quidnick Company's stock owned by said Spragues and said Spragues Manufacturing Company made to said Chafee.

Ans. These transfers were made to Chafee, and the original transfers were left in the book, so that if any creditors should come forward and attach the stock in Chafee's hands, that transfer they could tear out of the book and Mr. Chafee could say that he had no stock; and, on the other hand, if it was attached in the hands of the Spragues, those transfers would be torn out.

Int. 36. Do you mean to say that if this stock were legally transferred to Mr. Chafee that it would be subject to attachment by the creditors of the Spragues or the Sprague Manufacturing Company?

Ans. That is what the counsel thought at the time.

Int. 37. Was it or not understood at the time of the alleged transfer to Mr. Chafee, and do you or not mean to have it understood from what you have said, that this transfer of the Quidnick Company's stock to Chafee was made for the purpose that if the creditors of the Spragues and Sprague Manufacturing Company should demand Mr. Chafee's sale of said stock, and the application of proceeds to the payment of the indebtedness of the Spragues and A. & W. Sprague Manufacturing Company, that he could say that no transfer of any such stock had ever been made to him; and, on the other hand, if a creditor or creditors of said Spragues or Sprague Manufacturing Company should attach said stock, that said Spragues could say that there had been a transfer of all said stock made to said Chafee, and this with a view to prevent creditors of said Spragues and said Sprague Manufacturing Company from getting possession of said Quidnick Company's stock, or any benefit or advantage therefrom?

Ans. That is just what I mean. The transaction was made for the purpose of covering up the stock and keeping it away from creditors.

Int. 39. Subsequently were these transfers by you of 1,082 shares, by William Sprague of 1,082 shares, by Mary Sprague of 601, and by the A. & W. Manufacturing Company of 455 shares of stock in the said Quidnick Company to Fanny Sprague, in trust, and of 802 shares of said stock by Fanny Sprague to Mary Sprague, in trust, and about when did these several transfers occur?

Ans. The transfers was made for the purpose of making it more secure toward keeping it away from the creditors. They were made some time in December, 1873. The stock book will tell; it is only a matter of record.

Int. 40. For what purpose were those several transfers of Quidnick Company made?

Ans. To keep it out of the reach of the creditors.

Int. 41. Do you recollect anything about certain assignments by way of indenture made by yourself, by William Sprague, A. & W. Sprague, and the A. & W. Sprague Manufacturing Company, to Zechariah Chafee, all dated April 6, 1874? Were such assignments made, and when?

Ans. They were made, I think, in July, 1874.

Int. 42. Do you mean to say that said assignments were not made on the day they purport to be dated?

Ans. I am rather uncertain about it, whether it was in July or April.

Int. 43. Do you recollect anything about the institution of proceedings in bankruptcy in the United States District Court in the district of Rhode Island prior to making said assignments against yourself, William Sprague, A. & W. Sprague, A. & W. Sprague Manufacturing Company, Fanny Sprague, and Mary Sprague; and if yea, were those proceedings prosecuted to final decree?

Ans. There was nothing of the kind commenced against Fanny and Mary Sprague, but there *was* proceedings commenced against William Sprague, Amasa Sprague, A. & W. Sprague, and A. & W. Sprague Manufacturing Company.

Proceedings in bankruptcy were commenced by the National Bank of Commerce of Providence, and they agreed to withdraw their action, provided we would make the assignment. We made the assignment and they withdrew.

Int. 45. Were not all the assignments dated April 6, 1874, made in consequence of the institution of proceedings in bankruptcy by said National Bank of Commerce and the agreement to discontinue such proceedings if such assignment were made?

Ans. That was the arrangement.

WILLIAM SPRAGUE testified as follows (Rec., p. 413): —

Int. 22. At the time you executed the deed to the three trustees and subsequently to Mr. Chafee, did you expect that if the business of the corporations could be carried along for the time mentioned in the deed that you would be able to extricate the company from its financial embarrassments and have a surplus of the estates left at that time which would revert to the grantors in the deed, and was the deed executed by you for that purpose?

Ans. There was three dollars of property, as then estimated, to pay one dollar of debt, which could have been paid easily, if properly managed, within the time specified in the deed. Yes; it was for that purpose.

Int. 23. Did the executing of the deed delay the creditors whose debts had already matured from collecting their claims due against the company by ordinary legal remedy for the period of three years?

Ans. It did.

Int. 24. State what led to the making of the deeds of assignment of April 6, 1874.

Ans. To prevent the property from being taken possession of under the United States Bankruptcy Act.

Int. 25. State whether or not a petition in bankruptcy had been filed against the estate, by whom it was filed, and what

steps were taken to prevent the estate from being thrown into bankruptcy.

Ans. The Bank of Commerce of Providence had filed a petition in bankruptcy and the assignments were made to prevent it.

Int. 26. As the result of making the assignments, were the bankruptcy proceedings withdrawn?

Ans. They were.

Mrs. MARY SPRAGUE testifies as follows (Rec., p. 514): —

Int. 19. State whether or not, on the second day of December, 1878, you signed a transfer of the stock owned by you in the Quidnick Company on the transfer book of the company to Zechariah Chafee, trustee; and if so, what led you to make the transfer, and where was the transfer signed by you?

Ans. The transfer was sent over here by George Harris, and I told him I should not sign it. In about an hour afterwards Mr. John Gardner came and Mr. Amasa Sprague, and Mr. Gardner said if I did not sign it my property in the Quidnick Company would be attached. I told him I was not going to assign it to Zechariah Chafee. He told me if I signed it it would be just the same, and I could have the interest from it as if it was my own. They told me it was only just a form to save it, and I signed it in this room on this table [pointing to it].

Int. 20. Was the transfer written on the transfer book before the book was brought for you to sign, or after it had been brought here; and if so, by whom was it written?

Ans. I do not remember.

Int. 21. Was John A. Gardner the attorney who advised you in legal matters?

Ans. Yes; Mr. Thurston and he were my counsel, and all I signed was by their advice. I never should have signed that trust deed if it had not been for Mr. Thurston.

Int. 22. Did Mr. Gardner state to you at this time that Mr. Chafee had been appointed trustee when he induced you to sign the transfer?

Ans. Yes; but I heard of it in the morning before he came. The way he explained it to me I thought I should hold my stock in that company just the same as if I had not signed this transfer.

Int. 23. Did you believe from what Mr. John A. Gardner stated to you, that Mr. Chafee had been appointed trustee, and that he held his office under the deed executed by you on the evening of Nov. 28, 1873?

Ans. No, I did not think so, and I did not like to sign this transfer to him, because I did *not* acknowledge him to be my trustee.

Cross-Int. 51. In your answer to questions 25 and 26 you state that you own certain corporate stocks. State whether you did not, on or about March 9, 1874, transfer those shares of corporate stocks to Zechariah Chafee, trustee, under a conveyance from yourself and other parties, dated Nov. 1, 1873, for the benefit of creditors, with the exception of ten shares of stock in the American Screw Company?

Ans. Well, I did as collateral security. He always told me that after the business was settled up he was going to give me back my stocks.

Cross-Int. 52. As collateral security to what?

Ans. To save them, just as it was with the other property, so that it would not be attached.

Int. 55. In your answer to Cross-interrogatory No. 51 you state that you did transfer the stock mentioned in that interrogatory to Zechariah Chafee as collateral security. Was not the transfer that you made simply an agreement to transfer when called for by him in writing? State what led you to make that agreement or transfer.

Ans. It was simply an agreement, and he was to call upon me for transfer and he never has. It was to save my stock

from attachment, the same as all the rest of my property. Mr. Thurston came here and told me I must transfer this over to Mr. Chafee to save it, and I should have the interest of it as long as there was any.

Int. 56. Did you believe from what Mr. Gardner and Mr. Thurston told you that Mr. Chafee had been legally appointed trustee, and that it was necessary to make these transfers in order to protect your property from attachments, and did you rely upon their statements of making the same?

Ans. I did; they were my counsel and I did not think they would ask me to do anything that wasn't right.

Mrs. HARRIET SPRAGUE testifies as follows (R., p. 521):—

Cross-Int. 20. You have said that on the evening of Nov. 28, 1873, you saw several papers signed in the house of Mrs. Fanny Sprague, which you supposed to be deeds; also that on Dec. 1, 1873, you saw people in the house of Mrs. Fanny Sprague altering the same deeds. How do you know that the deeds or papers you saw on those two evenings were the same?

Ans. Because I heard them all talking about them and knew they were from what was said. I heard them say it was easier to alter those than to draw up new ones. That was why I was sure of it. There wasn't time to draw up new ones and get them recorded in time to prevent attachments. That was thoroughly discussed before they commenced altering them.

Cross-Int. 21. Who took part in this discussion?

Ans. Mr. Thurston, Mr. Gardner, Mr. George Harris, Latham, Doyle, Amasa, and I don't know who else.

Mr. FRANCIS W. LATHAM testified as follows, (R., pp. 528–530):—

Int. 6. (P. 528.) Please state whether you were present at the execution of such deeds and mortgages to Zechariah Chafee; and if yes, state who were present, when and where it was, and all the circumstances connected with it.

Ans. (P. 530.) I was present in the house on the evening of Dec. 1, 1873, when the alterations were made in the deed executed Nov. 28, 1873. . . . Harris and John A. Gardner, and likely others, were engaged that evening, Dec. 1, 1873, from 10 o'clock till nearly two o'clock next morning making erasures, alterations, and scratching out names of Waterman, Lockwood, and Nightingale, and substituting Zechariah Chafee, and dates of November 28, and changing to December 1, and such alterations as were necessary to changing the trust from Waterman, Lockwood, and Nightingale to Zechariah Chafee. . . . . Everything was bustle and confusion to get the alterations made in so many deeds, it being desirable to have them recorded immediately, and in every place where property was situated, to prevent attachments. It was talked over by counsel, that if the deeds were not on record next morning, the property would be covered by attachments, Hopkins and Pomroy, of Providence, R.I., having threatened that afternoon; to attach the next morning, and this must be done before attachments could be put on. Mr. Thurston stated in relation to the alterations, that it would not make any difference, that the alterations would not vitiate the document; that there would be no controversy about the matter.

CHAFEE, the grantee and trustee, testifies as follows, (R., p. 350): —

Cross-Int. 26. Did you give orders to have any or all of said deeds recorded that night?

Ans. I gave orders to have them recorded as soon as possible.

Cross-Int. 27. What was your reason for having them recorded as soon as possible?

Ans. I considered it my duty to let the creditors know of my acceptance of the trust.

Cross-Int. 28. Were they not recorded that night for fear of attachments being placed on the property?

Ans. I have already sworn that I ordered them recorded as soon as possible, as it was rumored attachments were intended.

Cross-Int. 29. Do you mean attachments by the creditors of the A. & W. Sprague Manufacturing Company?

Ans. I do; by some of them.

Cross-Int. 38. Were not the assignments made to you that night, Dec. 1, 1873, made and recorded to prevent the creditors from enforcing matured claims by attachment upon the property?

Ans. They were made and accepted by me in good faith. As to that question, any one can judge what they were made for. This last clause was my remark to Mr. Patten, and not part of my answer to the question.

Cross-Int. 39. Had you heard rumors on the street or elsewhere, previous to Dec. 1, 1873, that the creditors threatened attachment? And, if yes, state when you heard it and what you heard.

Ans. On the Saturday previous I heard in the post-office lobby that if the Spragues did not make over their property in trust for their creditors' benefit, that some of the creditors would put on attachments. That was the rumor. That was all the rumors of attachments I heard.

CHARLES HART testifies as follows (R., p. 432): —

Int. 3. Will you state in such detail as you deem necessary for a thorough understanding of the same, the circumstances connected with the preparation and execution of that deed?

Ans. . . . (P. 432.) The creditors, many of them, had become very impatient at the delay in carrying out the scheme substantially agreed upon at the meeting early in November, above referred to. Rumors were circulated of intended attachments by creditors dissatisfied with this delay, which, if made, it was thought would probably defeat the whole

scheme of an extension. Thereupon the Spragues and the officers of the corporation, on the first day of December, 1873, took into consideration the subject of executing the trust deed as prepared and substantially agreed upon to Zechariah Chafee, of Providence, instead of the three trustees above named. They decided to do so — did so. . . . It was the unanimously expressed desire of the committee of creditors during these meetings in November that the mills should be kept running, it being the expressed opinion of the committee and of the creditors generally, that with the return of better times, which was speedily anticipated, the Spragues would be able to meet the interest of the mortgage notes as it accrued, and the principal at maturity, and the 10,000 or 12,000 operatives be kept in employment; and the deed so provided to carry out that view, — that the mill should be kept running.

Int. 6. Will you state for what reason the assignments of the 6th of April, 1874, made by Amasa, William, A. & W. Sprague, and the A. & W. Sprague Manufacturing Company, were executed to Zechariah Chafee?

Ans. Subsequent to the execution of the trust mortgage one of the creditors of the A. & W. Sprague Manufacturing Company, to wit, the National Bank of Commerce, in the city of Providence, filed a petition under the National Bankrupt Act, then in force in the District Court of the United States in the district of Rhode Island, against the corporation, and against Amasa and William Sprague individually, and as copartners under the style of A. & W. Sprague. This creditor, through its counsel, Charles S. Bradley, Esq., proposed that if some further instruments satisfactory to the creditor and him as their counsel should be executed by the corporation, and Amasa and William individually and as copartners, they should withdraw the petition in bankruptcy. The instruments of April 6, 1874, referred to, were declared by the creditor, and him as its counsel, to be satisfactory if executed. They were executed, and the petition in bankruptcy was withdrawn.

WILLIAM J. KING, testifies as follows (R., p. 463) : —

Int. 34. Whether or not after that letter (letter of proposed trustees declining to except trust) was received the name of Mr. Chafee was substituted as trustee; and if so, by whom?

Ans. After receiving this letter we were in great trouble to know what to do, the Spragues' lawyer fearing every moment that attachment would be put upon the property, as many claims were due. We pressed the trustees to reconsider, and they replied they were unwilling to take any hazard in this business, but they would probably go to Boston the next day and see Judge Thomas about it; but the next day, early in the morning, it was announced that Mr. Zechariah Chafee had been appointed and accepted the deed of trust, it being necessary to protect the property from attachment immediately.

BENJAMIN F. THURSTON testifies as follows (Rec., p. 478) : —

Int. 3. Have you read the deposition given by Mr. Hart in this case? and if so, state whether you are cognizant of the facts and circumstances therein stated by him in regard to the preparation, execution, and delivery of said trust mortgage and assignments, and whether you agree with him in his statement of those facts and circumstances substantially.

Ans. I have read the deposition of Mr. Hart in this case, and his statement of the facts and circumstances attending the preparation of the form of the so-called trust deed, and also the circumstances connected with the execution of the deed and the delivery of the same to Mr. Chafee, accord substantially with my own recollection. There is nothing that occurs to me at this moment that I desire to add to the statement made by him.

COMPLAINANTS' EVIDENCE RELATING TO THE SIGNING AND ACKNOWLEDGMENT OF THE TRUST DEEDS ON THE NIGHT OF DEC. 1, 1873.

Mary Sprague did not acknowledge the deed after the erasure of the names of the three trustees as grantees, and the insertion of the name of Chafee as grantee.

Her evidence is as follows (R., p. 514) : —

Int. 15. Were you again present at the house of Mrs. Fanny Sprague on the first day of December, 1873? and if so, state who was present, and the purpose of you being there.

Ans. I was not there.

Int. 16. State whether or not you met Mr. Henry Martin, Notary Public, there or anywhere else on the first day of December, 1873, and whether you signed and acknowledged the deed you state you executed on the twenty-eighth day of November to Mr. Zechariah Chafee.

Ans. No; I did not meet him anywhere; I never saw him but once. No; I signed and acknowledged the deed on the twenty-eighth of November to the three trustees. I did not sign and acknowledge the deed to Mr. Zechariah Chafee the first of December. I was not consulted about any change and knew nothing about it until the next morning, December 2.

Mrs. HARRIET SPRAGUE, daughter of Mary Sprague, testified as follows (R., p. 520) : —

Int. 10. Do I understand you to mean that Mrs. Mary Sprague was present with you on the evening of Dec. 1, 1873, at the house of Mrs. Fanny Sprague?

Ans. She was not there.

Mrs. HARRIET B. SPRAGUE, wife of Amasa Sprague, testifies as follows :—

Int. 17. (R., p. 524.) State whether or not you were

again present at the house of Mrs. Fanny Sprague on the evening of Dec. 1, 1873; if so, state at what time you came there, who you came with, who was present, and what was done there that evening?

Ans. I was. Early in the evening, I came with my husband, Mr. Amasa Sprague. I was up-stairs all the evening. I can't tell you who was present. I saw nothing done, because I was not down-stairs.

Int. 18. Did you see any gentlemen in the house of Mrs. Fanny Sprague that evening?

Ans. Yes, sir, Mr. Latham, Mr. Doyle, Mr. Chafee, and others, I don't know who.

Int. 19. Did you see any ladies present that evening besides yourself? If so, state who they were.

Ans. Up-stairs I saw Mrs. Fanny Sprague, Mrs. Latham, Mrs. Doyle, and Mrs. Harriet Sprague.

Int. 20. Was Mrs. Mary Sprague present there?

Ans. No, sir.

Int. At any time that evening?

Ans. No, sir.

Int. 22. How long were you present yourself on the evening Dec. 1, 1873?

Ans. From early in the evening until between 2 and 3 o'clock in the morning December 2.

Int 29. Did you see Mrs. Mary Sprague that evening?

Ans. No, sir.

Fanny Sprague did not acknowledge the deed after the substitution of Chafee in the place of the name of the three trustees as grantees.

Mrs. Harriet Sprague testified as follows (R., p. 519): —

Int. 3. Were you acquainted with Mrs. Fanny Sprague?

Ans. Very well indeed.

Int. 8. State whether you were present at the house of

Mrs. Fanny Sprague on the evening of Dec. 1, 1873; and if so, who was present and what was done there that evening?

Ans. I was there. . . .

Int. 11. State whether or not you saw any of the parties who had signed the deed of November 28, acknowledge the deed before Mr. Henry Martin, on the evening of Dec. 1, 1873.

Ans. I did not; I did not see Mr. Martin at all that night.

Int. 12. State whether or not Mrs. Fanny Sprague was present with the parties who were there; and if so, how long she remained so present?

Ans. I did not see her down-stairs at all that night. I sat with her part of the evening in her lodging-room. Her two daughters, Mrs. Latham and Mrs. Doyle, and Amasa's wife, my daughter, Mrs. Harriet B. Sprague, were up there also; there was nothing for us to stay down-stairs for. We sat up with Mrs. Fanny until she was tired enough to go to bed.

Int. 13. What time did she retire, if you know?

Ans. Some time between 11 and 12 o'clock; I don't know the exact hour; it was late.

Int. 14. State whether or not she acknowledged the deeds, or any of them, which they were changing or substituting down-stairs before Henry Martin that night?

Ans. She did not. I saw no acknowledgment made by any one; did not see Henry Martin at all that night.

Int. 15. Can you state more particularly the hour when you left that house that night?

Ans. It was after 12; but I don't know how much after.

Cross-Int. 24. Did you talk with Mrs. Fanny Sprague while you were in her room about what was going on down-stairs?

Ans. I did. I told her they were altering the deeds. I told her Mr. Chafee was down-stairs and they were going to substitute him in the place of the three gentlemen whom she supposed were to be her trustees.

Cross-Int. 31. Will you please state what was the object of your going over to Mrs. Fanny Sprague's on the evening of Dec. 1, 1873.

Ans. I went over there by invitation. It was wholly unexpected by me to go there that night. Amasa and his wife drove in from Cranston, came in here and told me what was going to be done over there and wanted me to go with them, and I went.

Mrs. HARRIET B. SPRAGUE testified as follows (R., p. 524) : —

Int. 17. State whether or not you were again present at the house of Mrs. Fanny Sprague on the evening of Dec. 1, 1873 ; if so, state at what time you came there, who you came with, who was present, and what was done there that evening?

Ans. I was. Early in the evening I came with my husband, Mr. Amasa Sprague ; I was up-stairs all the evening. I can't tell you who were present ; I saw nothing done, because I was not down-stairs.

Int. 19. Did you see any ladies present that evening besides yourself? If so, state who they were.

Ans. Up-stairs I saw Mrs. Fanny Sprague, Mrs. Latham, Mrs. Doyle, Mrs. Harriet Sprague.

Int. 22. How long were you present yourself on that evening of Dec. 1, 1873?

Ans. From early in the evening until between 2 and 3 o'clock in the morning of December 2, I should judge.

Int. 23. Were you in the company with Mrs. Fanny Sprague during the whole or the greater part of that time? If so, state how long you were in her company.

Ans. All the time until she retired, about 11 o'clock.

Int. 24. Where were you after she retired?

Ans. I sat on the top of the stairs ; Mrs. Latham was with me.

Int. 25. Near her room?

Ans. Quite near.

Int. 26. State whether or not Mrs. Fanny Sprague signed any deed or deeds and acknowledged the same before Mr. Henry Martin, and delivered the deed so signed to Mr. Zechariah Chafee that night?

Ans. No, sir; she did not.

Int. 27. Would you have known if she had done so, from your relations with her, that night?

Ans. Yes, sir.

Int. 30. When you left the house of Mrs. Fanny Sprague where did you go?

Ans. I went to Pawtuxet — to Colonel Wheeler's, the town clerk of Cranston.

Int. 31. Did any one accompany you?

Ans. Mr. Amasa Sprague and the coachman.

Int. 32. What did you go for?

Ans. To get Mr. Wheeler to go to the town clerk's office to put the deeds on record.

Cross-Int. 44. On that evening, while you were up-stairs, did any members of the family come to see Mrs. Fanny Sprague or you in her room?

Ans. All of them, up and down.

Cross-Int. 45. Please state who, by name.

Ans. Mr. Amasa Sprague, Mr. Thomas Doyle and wife, Mr. F. W. Latham and wife, Mrs. Harriet Sprague.

Cross-Int 46. What was the conversation about between these parties, Mrs. Fanny Sprague, and yourself?

Ans. Mostly concerning her health. She was very delicate at that time.

William Sprague signed the deeds with the three trustees then named in them, on the night of Nov. 28, 1873, but did not acknowledge them as made to said trustees.

Evidence: See copy of the acknowledgment on one of said deeds, Rec., p. 16. The certificate of that acknowledgment does not contain the name of William Sprague.

Immediately on signing said deeds, and before they were acknowledged on the 28th of November, William Sprague left for Washington and did not return for several days; when he did return he made a separate acknowledgment of one of the deeds on the sixth day of December, 1873, as shown by copy of said acknowledgment found in the Record, p. 318.

And then on the tenth day of December he acknowledged another duplicate of said deed, as shown by copy of said acknowledgment found in Rec., p. 367.

William Sprague, Rec., p. 412, testifies as follows: —

Int. 20. Did you, after your return, acknowledge the deed to Mr. Chafee, and was it the same deed which had been executed to the three trustees.

Ans. Yes, and it was the same deed that was acknowledged to the three trustees.

Int. 21. Did you write your signature over again, or did you simply acknowledge the signature which you had already made on the deed to the three trustees to be your signature?

Ans. I made no signature but to the three trustees.

The last-mentioned duplicate deed as first delivered to Chafee was recorded on December 2. There is no evidence that the *deed* was ever recorded after its acknowledgment by William Sprague; all that the record contains in relation to it is found on p. 366, in an examiner's note, to the effect that "witness to William Sprague's signature and his acknowledgment appended to this instrument, received for record in the town clerk's office of South Kingston, R.I., Dec. 10, A.D. 1873, at 6.20 P.M., and recorded in said South Kingston Land Evidence Book 24, and at p. 477, and in said South Kingston Personal Property Record Book No. 2, and at page 213.. Witness, J. C. Perry, Town Clerk."

Amasa Sprague did not acknowledge the deed at any time except on the night of November 28, when it contained as

grantees the names of the three trustees, which names were, on the night of December 1, erased, and that of Chafee substituted.

His evidence in this behalf is as follows (R., p. 423) : —

Int. 15. State whether or not you signed or acknowledged that deed to Mr. Chafee on the night of Dec. 1, 1873, which you have referred to as treasurer of the A. & W. Sprague Manufacturing Company, or as one of the firm of A. & W. Sprague, or for yourself individually?

Ans. The deed was signed on the twenty-eighth day of November, sealed and executed on the night of the twenty-eighth day of November, and was never signed or executed at any other time.

[Question repeated to witness.]

Ans. No; it had already been signed and acknowledged on the twenty-eighth of November, 1873, to the three trustees.

Frances W. Latham, one of the subscribing witnesses to said deed, testifies as follows (Rec., pp. 528, 529, 530, 531) : —

Int. 5. (P. 528.) State whether or not you witnessed the execution of trust or mortgage deeds made on or about the twenty-eighth day of November, 1873. . . .

Ans. (P. 529.) I am under the impression that is the date. I am quite certain I never witnessed but one document from these parties, — the Spragues, to these gentlemen. Rufus Waterman, Amos D. Lockwood, and George C. Nightingale.

Int. 7. Please state whether or not you have any knowledge of the alteration of any deeds so made; and if yes, when, where, and by whom, and what was the alteration made. Please describe it in full.

Ans. (P. 530.) I was present in the house on the evening of Dec. 1, 1873, when the alterations were made in the deed executed Nov. 28, 1873. . . .

Harris and John A. Gardener and likely others were en-

gaged that evening, Dec. 1, 1873, from 10 o'clock until nearly 2 o'clock next morning making erasures, alterations, and scratching out names of Waterman, Lockwood, and Nightingale, and substituting Zechariah Chafee, and dates of November 28, and changing to December 1, and such alterations as were necessary to changing the trust from Waterman, Lockwood, and Nightingale to Zechariah Chafee. Neither of the parties signed or acknowledged the deed that night in my presence or to my knowledge. I was not asked to witness any signatures and did not witness any. Mr. Henry Martin was at the house. He came there and immediately went up-stairs and did not see him come down from there or know when he went away. He was not down in the room where the parties were altering the deeds that I saw. Mrs. Fanny Sprague retired that night at about 10 o'clock. Mrs. Mary Sprague was not present. Amasa Sprague was the only one of the signers of the deed present. . . . Mr. Thurston stated in relation to the alterations that it would not make any difference, that the alterations would not vitiate the documents, that there would not be any controversy about the matter.

Cross-Int. 3. (P. 529.) Were you requested to be at that meeting (Dec. 1, 1873) for the purpose of witnessing the execution of said trust deeds to Mr. Chafee? If yes, who requested you, and did you so witness them, and do they bear your personal signature as attesting witness?

Ans. (P. 531.) I was not requested to be present as a witness, and did not witness the deed that night. I witnessed the deed Nov. 28, 1873, and never witnessed it at any other time, nor witnessed any other deed. I lived there with Mrs. Fanny Sprague at that time.

COMPLAINANTS' EVIDENCE IN RELATION TO THE MEETING OF THE CREDITORS AND THE CONDITION OF THE ESTATE OF THE SPRAGUES.

Evidence of RUFUS WATERMAN. (Rec., p. 448.)

Int. 3. Whether or not there was a gathering of gentlemen representing several banks of Providence that month to consider any propositions from A. & W. Sprague Manufacturing Company; and if yes, where the meeting was held and how many banks were represented?

Ans. There was, and the meetings were held in the Merchants Bank Directors' room. I don't know how many banks, the creditor banks or a large portion of them.

Int. 4. Whether or not the meeting was confined to creditors of the A. & W. Sprague Manufacturing Company?

Ans. The meeting was called for the purpose of considering a loan to the Spragues. There were quite a number of people standing around there.

Int. 5. Whether or not you were one of the committee appointed at one of these meetings?

Ans. I was.

Int. 6. Whether or not you acted as such committee man?

Ans. I did.

Int. 7. How much time did you give to the duties of that committee?

Ans. Two or three days.

Int. 8. Did that committee make a report, and was said report printed?

Ans. They did, and it was printed.

Testimony of HENRY HOWARD. (Record, p. 456.)

"I don't think the committee to which you referred, or at least to which I referred, took any action. My declining to be a member of it, as I remember, broke that committee up.

It seems to me now that I was afterwards put on another and larger committee, whose duty it was to see what could be done in regard to the selection of a committee to act as trustees. As the matter now comes to me, as I talk about it, I perceive that I should have said, perhaps, trustees instead of committee, when I referred to my first appointment. I was named as one of three to whom the property should be intrusted, in the first place, and after that as one of the committee of five, and on that committee I did act. But that was appointed for the purpose of trying to get some trustees to take the property, I think. Yes, the committee did take some action. If I remember there were several board of trustees suggested. Finally there was one, which, I think, was made up of Amos D. Lockwood, George C. Nightingale, and Rufus Waterman. We were very desirous that they should serve. There was a meeting held in Weeden's building, I think, in the office of Thomas C. Greene. Messrs. Lockwood, Nightingale, and Waterman were present with Mr. Payne and Mr. Greene, I think, as their counsel. They were very desirous of having it determined whether they would become, in any event, personally liable. The matter was discussed pretty generally. We endeavored to get those gentlemen to stand on this board. As I recall it, they retired with Mr. Payne, and probably Mr. Greene, to another room connected with the office, and when they came back it was understood by us that Mr. Payne declined to give them the assurance as to their freedom from liability which they required. I don't mean to say that that was a positive and express refusal on Mr. Payne's part, but I was satisfied that he would not give them any such assurance, and went to Mr. James Tillinghast, who was present as counsel for the Spragues, and told him it would be of no use to make any further effort to get those gentlemen to act. The meeting broke up without anything being done, and the next day, I think, I heard of Mr. Chafee's appointment. The general desire on the part of the creditors was that there

should be some trust conveyance made to the Spragues. This committee of five held a meeting in Deacon King's office and took some action in the direction of approving Mr. Chafee's appointment, the object being to tranquillize, so to speak, the feeling in the community."

Int. 5. Do you recollect whether at that meeting a card was prepared for publication by the committee?

Ans. Yes, I believe there was.

Int. 6. Do you recollect what was done with it?

Ans. I think it was signed by four (one of that committee was a New Yorker), and published in the papers.

Int. 7. To what did it relate?

Ans. It was in the direction of showing our approval of Mr. Chafee's appointment, although we knew nothing about it until it was done.

Testimony of WILLIAM J. KING. (Record, pp. 460, 461, 462, 463, 464, 465.)

Int. 6. Whether or not any committee was appointed at that meeting; and if yes, for what purpose and who composed it?

Ans. There was a committee appointed at that meeting; committee were composed of five William J. King, Henry Howard, W. H. Hopkins, and Daniel Remington, all of Providence, and J. L. Ricker, of New York. They were appointed to examine a trust deed and submit the same to the counsel and nominate trustees.

Int. 7. How much of the day was the meeting in session?

Ans. I do not recollect the time; the committee reported the same day.

Int. 16. Please state whether this committee nominated trustees; and, if yes, who they were?

Ans. They did nominate three: Rufus Waterman, Amos D. Lockwood, George C. Nightingale.

Int. 17. Whether the committee or any of them did employ counsel; and if yes, what counsel?

Ans. I think they did; I think Judge B. F. Thomas, of Boston; Abraham Payne, of Providence; I am not quite sure whether this committee employed Thomas C. Greene or the proposed trustee.

Int. 29. Whether or not the gentlemen named as trustees finally executed the deed as trustees?

Ans. They did not.

Int. 34. Whether or not after that letter was received the name of Mr. Chafee was substituted as trustee; and if so, by whom?

Ans. After receiving this letter we were in great trouble to know what to do, the Spragues' lawyer fearing every moment that attachment would be put upon the property, as many claims were due. We pressed the trustees to reconsider, and they replied they were unwilling to take any hazard in this business, but they would probably go to Boston the next day and see Judge Thomas about it; but the next day, early in the morning, it was announced that Mr. Zechariah Chafee had been appointed and accepted the deed of trust, it being necessary to protect the property from attachment immediately.

Int. 35. How long had you then been in consultation with the three persons appointed as trustees in this matter?

Ans. I should say from the 6th to the 29th of November, 1873.

Int. 36. Whether or not any of the committee objected to the substitution of Mr Chafee as trustee?

Ans. None that I know of.

Cross-Int. 48. State whether or not the committee of which you are a member were consulted in regard to the appointment of Mr. Chafee as trustee before the execution of the trust deed.

Ans. They were not.

Cross-Int. 49. Are you a party to a suit or bill in equity

brought by a large number of the creditors of the A. & W. Sprague Manufacturing Company to remove Mr. Chafee from his trust?

Ans. No, sir.

Re-direct Int. 50. Do you recollect whether or not the committee of creditors published a card in relation to Mr. Chafee's appointment?

Ans. I do not recollect.

The following is the letter referred to by Mr. King in his testimony:—

WM. J. KING, *Chairman, etc.:*—

We have given to the proposed deed of trust of the Spragues' property, to be executed by us as trustees, the most careful consideration, with an earnest desire to see our way clear to accept the same; but, acting under the advice of counsel, we must decline to do so, unless creditors, by some previous action on their part, will protect us against personal liability.

Very respectfully,

RUFUS WATERMAN,
A. D. LOCKWOOD,
GEORGE C. NIGHTINGALE.

PROVIDENCE, Nov. 29, 1873.

Deposition of ABRAHAM PAYNE. (Rec., pp. 482, 483.)

Int. 3. State whether or not you were present with the proposed trustees and others at the house of Mrs. Fanny Sprague, in the city of Providence, after you was retained in the matter; and if so, state when the meeting was, who was present, and the result of the meeting?

Ans. Sunday afternoon, Nov. 30, 1873, by request of Rufus Waterman, one of the proposed trustees, I went to the house of Mrs. Fanny Sprague and met there Rufus Waterman. Whether either of the other proposed trustees were present I do not positively recollect. Charles Hart was present as

counsel for the Spragues, and I think Benjamin F. Thurston, James Tillinghast, and John A. Gardner, also of our counsel for the Spragues, were present. Mr. Amasa Sprague was present. There may have been others, but I do not positively recollect that any other person was present. The object of the meeting was to see if the objection of the trustees to the acceptance of the deed by them could be overcome. There was no definite result. After much discussion the meeting broke up.

Int. 4. State whether or not you was present the next day at a meeting between the counsel of the Spragues and the proposed trustees at the office of Thomas C. Greene, Esq.; if so, state who was present, the purpose of the meeting, and the result of the same?

Ans. I was present in the early evening of Dec. 1, 1873, at the office of Thomas C. Greene, by request of the proposed trustees. I think all the proposed trustees were present, but I am not positive about the presence of any one of them except Mr. Waterman. Mr. Thomas C. Greene was present with me as counsel for the trustees. Charles Hart was present, and I think also Mr. Thurston, Mr. Gardner, and Mr. Tillinghast. Mr. William J. King was present, and I think other creditors of the Spragues, whose names I do not recollect. The specific object of this meeting, as I remember, was to ascertain if the creditors would indemnify the trustees against the risk of personal liability in case of their acceptance of the deed. It was definitely announced that no such indemnity could be given. After a short private conference between Mr. Greene, the trustees who were present, and myself, it was proposed to the counsel of the Spragues that Mr. Greene and I, with the trustees, should go to Boston the next morning to consult Benjamin F. Thomas and Henry W. Paine, with the view to see whether the objection of the proposed trustees to the acceptance by them of the deed could be overcome, and that we should telegraph the result from Boston. This proposition was attended

to and the meeting broke up, and on my way to the cars next morning Mr. Greene met me and notified me that he had received notice from Mr. Thurston that the deed had been executed to Mr. Chafee. This ended my connection with the trust deed until some years after, when I was employed by a committee of creditors to file a bill in equity for the removal of Mr. Chafee from his office of trustee.

Deposition of WILLIAM SPRAGUE. (Rec., pp. 412, 413.)

Int. 13. State the names of the other signers of the deed.

Ans. Amasa Sprague, treasurer for the A. & W. Sprague Manufacturing Company, Amasa Sprague, Fanny and Mary Sprague, A. & W. Sprague.

Int. 14. Was the deed fully executed at that time by all the parties grantors?

Ans. It was.

Int 15. Was the same accepted by the said Waterman, Lockwood, and Nightingale?

Ans. It was not.

Int. 16. Can you fix the date when said deed was so executed?

Ans. I think it was the 28th or 29th of November, 1873.

Int. 17. Were the three trustees present at the time of executing said deed, and what, if any, reasons did they give for not accepting the same?

Ans. They were present; their objections, subsequently stated, because of their personal liability.

Int. 18. What was then done by the creditors and the Spragues, including yourself, in reference to the matter? State all you know about it.

Ans. I was not consulted in any of the previous proceedings except the signing of the deed to the three trustees when it was executed, and returning to Washington, to which place I went immediately after signing the deed to the three trustees, I learned that Chafee had been made trustee, and was then ad-

vised to prevent attachments on my individual property, to execute it.

Int. 19. How soon did you learn of this change from the three to the one trustee?

Ans. Through my mother, who stated that matters were being badly managed. I think I returned within ten days.

Int. 20. Did you, after your return, acknowledge the deed to Mr. Chafee, and was it the same deed which had been executed to the three trustees?

Ans. Yes; and it was the same deed that was acknowledged to the three trustees.

Int. 21. Did you write your signature over again, or did you simply acknowledge the signature which you had already made on the deed to the three trustees to be your signature?

Ans. I made no signature but to the three trustees.

Int. 22. At the time you executed the deed to the three trustees and subsequently to Mr. Chafee, did you expect that if the business of the corporations could be carried along for the time mentioned in the deed that you would be able to extricate the company from its financial embarrassments, and have a surplus of the estates left at that time, which would revert to the grantors in the deed, and was the deed executed by you for that purpose?

Ans. There was three dollars of property, as then estimated, to pay one dollar of debt, which could have been paid easily, if properly managed, within the time specified in the deed. Yes; it was for that purpose.

Int. 23. Did the executing of the deed delay the creditors whose debts had already matured from collecting their claims due against the company by ordinary legal remedy for the period of three years?

Ans. It did.

Evidence of AMASA SPRAGUE. (Record, pp. 422–424.)

Int. 6. How long did you hold the office of president and treasurer from that time?

Ans. Up to the present time from that time. I was the treasurer long before that time.

Int. 7. What was the financial condition of the company in the fall of 1873?

Ans. It was bad. We owed more money than we could pay in a panic.

Int. 8. State whether or not the company made a conveyance of its property to Waterman, Lockwood, and Nightingale on Nov. 28, 1873, and what led to the making of that assignment; state fully.

Ans. They did make the assignment to Waterman, Lockwood, and Nightingale on Nov. 28, 1873. We had become embarrassed, and it was thought that by putting the property in that position to the three trustees there was property enough to pay all the indebtedness and have a large surplus left; and the creditors had several meetings, and it was done through their recommendation. It was made at the recommendation of the committee of creditors.

Int. 9. State when and where the deed to the three trustees was executed, and whether or not it was accepted by the three trustees at that time.

Ans. It was signed, sealed, and executed to the three trustees on the 28th of November, 1873, at Mrs. Fanny Sprague's house in Young Orchard avenue. The trustees did not accept the trust that night, but they expected to be able to accept it the next day; but the next day came and they warn't ready to accept the trust, on account of personal liability, without the creditors in some way would indemnify them from any losses. They refused to accept.

Int. 10. State what was then done in reference to the making of the deed by the Spragues and the creditors.

Ans. The trustees did not accept, and it run on until the first day of December following. Then Hopkins and Pomeroy, being creditors, came to the office and notified me that they proposed to put on an attachment, as there was nothing

to be done. I told them to wait until morning and the probability was the trustees would accept. They concluded to wait. Then I went to Mr. Thurston (between 4 and 5 o'clock in the afternoon of the 1st of December) and told him what Hopkins and Pomeroy proposed to do, and he said the thing must be fixed some way or other that night. Then he notified his associates of the condition of affairs, and notified them to meet at Mrs. Fanny Sprague's house that night. They met at Mrs. Fanny Sprague's that night — Mr. Tillinghast, Mr. Thurston, Mr. Gardner, and Mr. Hart, who then were my counsel, or were supposed to be, and Mr. Chafee was proposed by these gentlemen to be the trustee. They sent for Mr. Chafee (that is, the legal gentlemen), after looking the matter over, knowing if there warn't something done that night we should be all covered over with attachments next morning, and Mr. Chafee said that he would accept the trust. Then the deeds had been made out and executed to Lockwood, Nightingale, and Waterman, and their names were erased, and Mr. Chafee's inserted, and on the acknowledgment the twenty-eighth day of November was scratched out, and the first day of December inserted. After the deeds were complete, Mr. Martin, the notary, was sent for. He arrived, I should judge, somewhere about 1 o'clock, but he took no new acknowledgment. Mr. Thurston and Mr. Gardiner questioned the legality of the deed, and Mr. Thurston remarked that he hadn't any time to do it any differently, for it must be on record to-morrow morning before 9 o'clock. If it warn't we should all be covered over with attachments. Then most of the deeds were sent out that night, and the town clerks called up, and most of them were recorded before 9 o'clock in the morning.

Int. 11. What time of the night of December 1, or morning of December 2, were the deeds completed and sent for record?

Ans. It was on the morning of the 2d. They were fin-

ished somewhere in the neighborhood of 1 o'clock of December 2; they were sent for record shortly after.

Int. 12. State whether or not this arrangement was made for the purpose and with the view to deprive the creditors of obtaining their claims against the estate by the ordinary legal processes, and of delaying them from obtaining their claims against the estate for the period of three years?

Ans. Yes; it was all done for that purpose, — for delay.

Int. 13. State whether or not you expected by this arrangement that the debts of the company would be paid, and the property preserved to a greater or less extent for the benefit of the parties making the deed.

Ans. Yes, sir; that is so.

Int. 14. State whether or not there had been a meeting of the stockholders of the company which authorized you as treasurer of the company to execute this deed to Chafee prior to Dec. 1, 1873.

Ans. No, sir; I never had any authority.

Int. 15. State whether or not you signed or acknowledged that deed to Mr. Chafee on the night of Dec. 1, 1873, which you have referred to as treasurer of the A. & W. Sprague Manufacturing Company, or as one of the firm of A. & W. Sprague, or for yourself individually.

Ans. The deed was signed on the twenty-eighth day of November, sealed and executed on the night of the twenty-eighth day of November, and never was signed or executed at any other time. No; it had already been signed and acknowedged on the twenty-eighth day of November, 1873, to the three trustees.

Int 16. State whether or not you bid off the property or a portion of the property known as Canonchet at a sheriff sale; if so, state when, and under what circumstances.

Ans. I think that property was bid off at a sheriff sale in 1862, and I think I bid it off — I know I bid it off — to A. & W. Sprague, and we took immediate possession of it.

Deposition of ZECHARIAH CHAFEE. (Record, pp. 348, 349.)

Cross-Int. 12. Please to state who were present at the house of Fanny Sprague Dec. 1, 1873, at the time when you accepted the trust deeds.

Ans. Fanny Sprague, Mary Sprague, Amasa Sprague, George Harris, Thomas A. Doyle, Frank Latham, James Tillinghast, Charles Hart, Benjamin F. Thurston; Henry Martin called, and maybe one or two others. Amasa Sprague's wife was in and out.

Cross-Int. 13. Who personally asked you to go to the house of Fanny Sprague, and at what time did you reach the house?

Ans. Thomas A. Doyle called at my residence and requested me to go up to Fanny Sprague's residence at about 10 o'clock.

Cross-Int. 14. Did you remain in the dining-room or in the sitting-room?

Ans. The most of the time I was in the sitting-room. I was in the hall part of the time. I talked with the old ladies in the hall.

Cross-Int. 15. Were parties at work in the dining-room altering or changing the deeds.

Ans. There were parties in the dining-room attending to the business. I don't know what they were doing.

Cross-Int. 16. Please state what they were doing?

Ans. I was not in that room and cannot tell what they were doing. I have every reason to believe that they were attending to the business. It was on business.

Cross-Int. 17. Was you informed what that business was?

Ans. The deeds were handed to me and read by me and by me accepted. I was informed by Thomas A. Doyle they wanted me on business. I knew very well they were on this business after I reached the house.

Cross-Int. 18. What do you mean by this business?

Ans. I mean their intention of deeding this property to me in trust for the creditors.

Cross-Int. 19. Did you not understand that they previously deeded the property to three trustees; to wit, Waterman, Lockwood, and Nightingale, and did you not understand that the persons in the dining-room were erasing the names of the three trustees and writing in your name as trustee?

Ans. I was aware that it was their intention to convey the property to the three trustees. I was also aware that the three trustees declined to accept. I knew nothing about the erasing of the names of the three trustees until the deed was handed to me, when I saw the erasures.

Report of Committee of Creditors.

(Rec., pp. 449–455.)

Providence, Oct. 31, 1873.

The committee appointed at a meeting of the representatives of various banks of the city of Providence to investigate the affairs of the A. & W. Sprague Manufacturing Company, and the various concerns depending upon it, respectfully report that they have given the whole subject their earnest and careful attention, and from the accounts which the company has placed before them they find, —

The A. & W. Sprague Manufacturing Company comprises Mrs. Fanny Sprague, Mrs. Mary Sprague, Mr. Amasa Sprague, Senator William Sprague, and two sons and two daughters of Mr. Edwin Hoyt.

The assets of this corporation consist of: —

The Baltic Mill	76,000 spindles.
Natick Mills	42,000 spindles.
	118,000 spindles.

Which we value at $15 per spindle, and which includes a large number of houses and many acres of land	$1,770,000
455 shares of the 5,000 shares of the Quidnick Company, at $374	170,000
(The condition of this company will be shown in subsequent accounts.)	
United States Flax Manufacturing Company, 33,000 spindles used in manufacturing print cloths, at $15	495,000
Cranston Print Works, with houses and lands belonging to it	1,100,000
Augusta (Me.) estate, including 40,000 spindles (which property has recently been valued by disinterested parties at $1,482,000) . . .	1,200,000
Bank and other stocks (after striking out a large amount as worthless or of doubtful value) .	1,044,000
Real estate in Cranston and elsewhere (upon basis of $2\frac{1}{4}$ cents per foot in Cranston and moderate valuations elsewhere) as per Schedule A	3,615,500

Cash advanced to the following companies: —

Rhode Island Horseshoe Company	$49,000
Sprague Mowing Machine Company	613,000
Comstock Foundry Company .	87,000
Point Street Iron Works . .	182,000
Wilcox Caloric Engine Company,	37,000
American Horse Nail Company .	14,000
In all	$982,000

Valued at		633,000
Personal manufacturing property in various mills and print works, including prints and goods in store		1,750,000
A. & W. Sprague (their indebtedness, see personal account following)		1,375,000
Cash on hand	$180,000	
Notes receivable (considered good),	60,000	
Accounts receivable (considered good)	240,000	
		480,000
Due from William Sprague, administrator estate Byron Sprague		53,000
Wm. Sprague's special in Wight & Tillinghast,		150,000
Morgan Mill estate		50,000
City of Augusta bonds		57,000
Landed property, not specified above, in Kansas and elsewhere, costing $124,000, estimated .		50,000
		$13,992,500
The indebtedness of the corporation is upon notes and acceptances		$3,130,000
Due to the Quidnick Company . . .		307,000
Due Wm. Sprague, guardian (Hoyt's) . .		220,000
Collins & Fenn (advances on goods) . .		306,000
Wight & Tillinghast		50,000
Flax Company's accounts and notes . . .		150,000
Cotton cloth, call loans, and other accounts .		730,000
Hoyt, Spragues, & Co.'s acceptances outstanding . . .	$5,462,300	
Less amount due from H. S. Company	2,065,000	
		3,397,300
		$8,290,300

The private property of the stockholders in this corporation is liable for the company debts.

The firm of A. & W. Sprague, both members of which are stockholders in the corporation, has assets as follows: —

1,654 shares First National Bank, Providence	$165,400
500 shares Second National Bank, Providence	50,000
2,164 shares Quidnick Company, at $374	809,336
215 shares Washington & Georgetown R.R. Company, at $70	15,050
1,855 shares Kennebec Land and Lumber Company, at $100	185,500
7 shares R.I. Horseshoe Company	700
200 shares R.I. Safe Deposit Company (total $500)	20,000
Kennebec Land and Lumber Company	18,587
Real estate in Maine (lumber-land)	20,000
Columbia Water Power Company	116,000
Bills receivable	80,500
Coburn Land Company (400,000 acres)	1,457,000
Interest in four schooners	23,000
	$2,961,073

Liabilities: —

Wm. Sprague, trustee for Almira Sprague	$124,000
A. & W. Sprague Manufacturing Company	1,375,000
Bills payable	1,109,000
William Sprague's individual note	25,000
	$2,633,000

In addition to these assets is the interest of A. & W. Sprague in Hoyt, Spragues, & Co., valued at $850,000.

The individual property of Mrs. Fanny Sprague is 802 shares Quidnick Company . . .	$300,000
One-third homestead estate and life interest in balance, fee of thirds being in A. & W. (total value reckoned here)	125,000
House on Young Orchard avenue and lots on Pitnam street	60,000
Bank stocks	10,000
Mrs. Mary Sprague has, —	
601 shares Quidnick Company . . .	228,140
Homestead estate	100,000
Bank stocks	100,000
Amasa Sprague, —	
Ladd farm, Warwick, 180 acres, with houses and other buildings	75,000
William Sprague, —	
Washington estates	130,000
Land and house, Peace street, Providence (40,000 feet)	25,000
Hoyt children, —	
816 shares Quidnick Company . . .	305,184
Due from Wm. Sprague, guardian (other individual property of these not known) . .	220,000
	$1,678,324

The further assets and liabilities of the A. & W. Sprague Manufacturing Company appear to be for $\frac{129}{136}$ of the Perkins Sheet-Iron Company (the remaining seven shares being owned by responsible parties).

This company's assets amount to . . .	$481,000

From which deduct depreciated machinery (of a total valuation of $26,000)	$20,000	
And stock of Sprague Mowing Machine Company . .	225,000	
		245,000
Balance assets		$236,000
The liabilities are (chiefly in notes) . . .		545,000
Leaving excess of indebtedness . . .		$309,000

Of which we place A. & W. S. liable for $\frac{129}{136}$ $293,000.

The Sprague Mowing Machine Company (of which the Perkins Sheet-Iron Company own three-fourths, but for the debts of which A. & W. S. are liable to full amount, other stockholders contributing $\frac{7}{136}$ of this three quarter interest) have assets, including one-half of Comstock Foundry Company's stock . . .	$514,000
We deduct for depreciation	44,000
	$470,000
Liabilities are	702,000
Leaving indebtedness in excess of assets . .	$232,000

The Wilcox Caloric and Steam-Engine Company have assets standing upon their books, $48,700.

We value the same at	$15,000
Their liabilities are	53,000
Balance, being excess of liabilities . .	$38,000

One-half of the stock of this company belongs to A. & W. S.; one-fifth at least is owned by responsible parties. We count the indebtedness of A. & W. S. as five-sevenths of above balance, $27,143.

572. The assets of the R.I. Horseshoe Company by their books appear to be . . . $527,000
Which we reduce 10,000

$517,000
The liabilities amount to 240,000

Balance of assets $277,000

$\frac{1165}{1333}$ of this company belongs to the Perkins Sheet-Iron Company, and makes this item in their assets good, but does not add further to this account, because included in assets of Perkins Sheet-Iron Company, as above.

The Comstock Foundry Company (another corporation), have assets, considered good, amounting to $163,000
And liabilities 89,000

Balance $74,000

Of which A. & W. Sprague Manufacturing Company own $\frac{94}{526}$ or $13,350.

We have arrived at the value of the Quidnick Company's property, as per following statement, given in verification of previous figures: —

Quidnick, two mills	31,000 spindles.		
Arctic Mill . .	27,000 "		
	58,000 "	at $25,	$1,450,000

(This covers 268 acres of land and many houses and stores.)

Due from A. & W. Sprague Manufacturing Company	296,000
Personal property	125,000
Total	$1,871,000

Divided into 5,000 shares.

Liabilities, none.

With reference to the affairs of the Atlantic De Laine Company, we find that neither the A. & W. Sprague Manufacturing Company, nor either of its stockholders, are stockholders in that corporation.

Hoyt, Spragues, & Co. are under acceptance for the De Laine Company for $2,200,000, and the De Laine Company owe Hoyt, Spragues, & Co., on account, $2,000,000 more.

Estimating the fixed property of the mill at one-half the valuation which stands against it upon its books, — say $2,400,000, — the De Laine Company can pay at least $3,000,000 upon its indebtedness to Hoyt, Spragues, & Co., so that the assets of Hoyt, Spragues, & Co. may be reduced by $1,200,000, in the event that the property of the De Laine Company shrinks to the extent of 50 per cent. of its appraised value.

We come now to the value of the interests of Amasa and William Sprague in the house of Hoyt, Spragues, & Co.

The statement made by this house says the indebtedness, outside of A. & W. Sprague Atlantic and Riverside, is about $900,000, all covered by sales of goods on hand.

After careful review of their books, they estimate copartnership assets in excess of liabilities	$2,200,000
Mr. Hoyt estimates his private property at	1,500,000
Leaving available assets at	$3,700,000

Which may be affected by the three accounts above mentioned.

We consider Mr. Hoyt's interest in H., S., & Co., and his private property, makes the account of the De Laine Company with H., S., & Co. good, he being a stockholder in the De Laine Company.

574. If this is correct, the interest of Amasa and William Sprague in the house of H., S., & Co. will add to their assets, as previously estimated $850,000

Unless there is loss by the Riverside mill, which is not probable.

As the result of all this examination, we consider the assets of the A. & W. Sprague Manufacturing Company to be	$19,495,247
And the liabilities of the A. & W. Sprague Manufacturing Company	11,475,443
Surplus	$8,019,804

Your committee, in making the above detailed report of the condition of the A. & W. Sprague Manufacturing Company, have endeavored to comply fully with the spirit of the following resolutions, under which they were created: —

Resolved, That in the opinion of the representatives of the banks of this city, aid ought to be extended to the A. & W. Sprague Manufacturing Company to enable it to meet its maturing obligations, provided a committee shall, upon examination of the affairs of the company, report that the sum of one million dollars requested will be sufficient to meet the probable requirements of the company, and provided that the mortgage security offered therefor shall be sufficient.

Resolved, That James Y. Smith, Seth Padelford, Rufus Waterman, and George F. Wilson be a committee to make the examination, and said committee are authorized to take the opinion of counsel upon the validity of the proposed mortgage.

To determine whether the mortgage proposed would be valid and free from objection under the provisions of the bankrupt act, they were compelled to ascertain whether the amount of aid asked would, in all reasonable probability, be sufficient to enable the company to meet its maturing obligations in the regular course of business. The unsettled condition of financial affairs and of business at the present time, and the large amount of obligations of the company maturing during the next ninety days, preclude the possibility of your committee reporting that the sum of one million dollars would enable the company to meet its engagements regularly in the future; and as, in the event of a failure to do so, the validity of the security might be questioned, your committee, under the advice of counsel, are of opinion that the sum asked for cannot be safely furnished.

Upon coming to this conclusion your committee were requested by the company to express their recommendation of the best course to be taken, under the circumstances, to enable the company to secure to its creditors the payment of their claims, and to preserve, as far as possible from shrinkage the vast available property in the hands of the company.

They therefore recommend that the A. & W. Sprague Manufacturing Company, and the individuals comprising that corporation, mortgage all their property to three trustees, who shall practically have all control and management of the entire property.

These trustees to issue notes to an amount which shall fully cover the amount of present indebtedness, these obligations having three years to run, and drawing, semi-annually, interest at the rate of seven and three-tenths per cent. per annum, with

the right reserved to pay five per cent. of the debt as often as in their judgment shall be practicable.

It is believed that all the creditors will accept these evidences of indebtedness, and if the trustees have the full authority asked for them they will be able to avert a great calamity to thousands of operatives, make the mill properties valuable, prevent an immense further shrinkage of values, and pay in full the indebtedness of the A. & W. Sprague Manufacturing Company, together with that of all its depending establishments.

It being the duty of the trustees to convert the property and pay the debts at as early a day as possible, it is not unlikely that the whole indebtedness may be cancelled in much less time than the three years.

Respectfully submitted,

JOS. Y. SMITH,
SETH PADELFORD,
RUFUS WATERMAN,
GEO. F. WILSON.

Sect. 2, Chap. 555, of the Statutes of Rhode Island of the year 1876, passed April 20 : —

SECT. 2. Sect. 20 of said Chap. 142 of the General Statutes is hereby repealed, the repeal whereof, however, shall not affect any contract heretofore entered into, or obligation heretofore incurred, or any remedy thereon ; and Sect. 21, of said chapter is hereby amended so as to read as follows, viz : "Sect. 21. Creditors and others having claims against any manufacturing corporation may have their remedy against the corporation as is now provided by law, or may enforce their claims by bill in equity against the said corporation, and the individual members thereof, subject to the limitations hereinbefore provided."

SECT. 3. All acts and parts of acts inconsistent herewith are hereby repealed.

Act of the Legislature of Rhode Island, Chap. 600, passed March 27, 1877: —

SECTION 1. No person shall hereafter be imprisoned, or be continued in prison, nor shall the property of any such person be attached, upon an execution issued upon a judgment obtained against a corporation of which such person is or was a stockholder.

SECT. 2. All proceedings to enforce the liability of a stockholder for the debts of a corporation shall be either by suit in equity, conducted according to the practice and course of equity, or by an action of debt upon the judgment obtained against such corporation; and in any such suit or action said stockholder may contest the validity of the claim upon which the judgment against such corporation was obtained upon any ground upon which such corporation could have contested the same in the action in which such judgment was recovered.

SECT. 3. All acts and parts of acts inconsistent herewith are hereby repealed.

SECT. 4. This act shall take effect on and after the date of the passage thereof.

FILED
MAR 14 1890

Supreme Court of the United States.

OCTOBER TERM, 1889.

In Equity, No. 213.

JOHN S. JENKS, WILLIAM H. JENKS, and CHARLES RHOADES,

Executors of Evan Randolph, Deceased,

APPELLANTS,

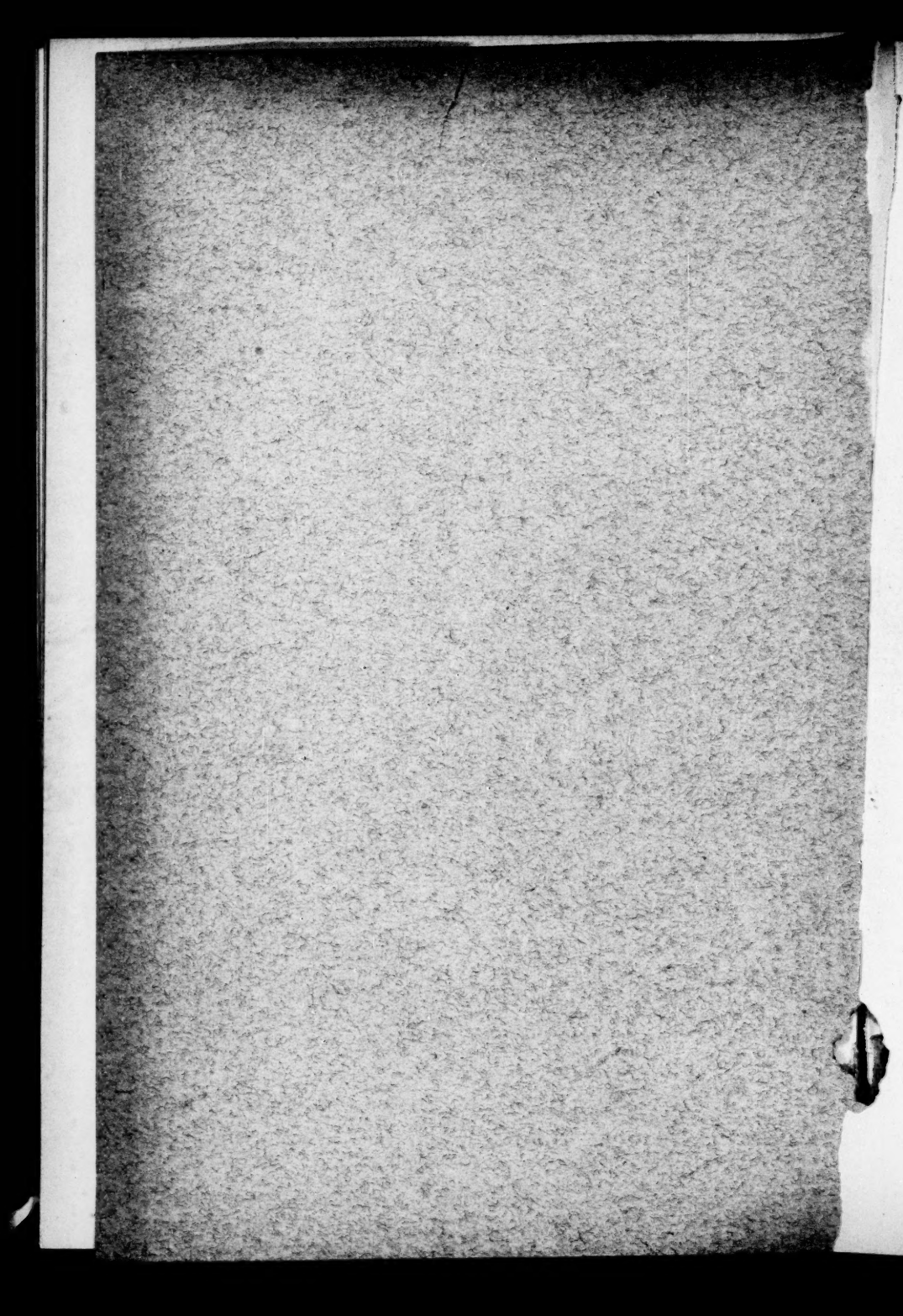
v.

THE QUIDNICK COMPANY Et Als.

Supplemental Brief on Behalf of Appellants.

B. F. BUTLER,
O. D. BARRETT,
A. B. PATTON,
of Counsel.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1890.



APPELLANT'S PRINCIPAL BRIEF.

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Supreme Court of the United States.

OCTOBER TERM, 1889.

EVAN RANDOLPH'S EXECUTORS,
Appellants,
v.
QUIDNICK COMPANY *et al.*,
Appellees.

In Equity,
No. 213.

Appellant's Supplemental Brief.

RESPONDENTS' OBJECTION TO THE TITLE OF PLAINTIFF TO SHARES OF STOCK.

Respondents' Brief, page 15.

Plaintiff obtained the shares by two several lines of title.

FIRST.

THE WATERMAN LEVIES.

Horatio N. Waterman recovered judgment and execution against the A. & W. Sprague Manfg. Co. The execution was duly levied by Kent, Deputy Sheriff, March 22, 1883, on 802 shares of the capital stock of the Quidnick Company, belonging to Fanny Sprague, and also on 601 shares

of the capital stock of said company to Mary Sprague; it being represented that Fanny Sprague and Mary Sprague were stockholders in said Quidnick Company, now, and at the time of, contracted indebtedness on which the judgment was found and execution issued, and all the right and title of the said Manfg. Co., and of Fanny Sprague and Mary Sprague in and to 1858 shares of the capital stock of the Quidnick Company, were sold by said Kent at public auction to Evan Randolph, the highest bidder; and a deed therof was delivered, duly executed and acknowledged, on the 7th of said April 1883 (R., p. 22).

To this title the respondents made several objections.

1. That William Sprague was not the treasurer of the Quidnick Company at the time of the levy. In support of said objection, R., pp. 203, 207, 286, 532 are cited.

These citations, pp. 203, 207, show only the return of the officer, that on March 22, 1883, he delivered into the hands and possession of William Sprague, treasurer of the Quidnick Company, "a true and attested copy of the within execution with his doings and the date and time of day of such levy, endorsed thereon; and did the like with Amasa Sprague, treasurer of the A. & W. Sprague Manfg. Co., in his hands and possession" (pp. 203, 207). It contains nothing upon this subject of who was treasurer save the return of the officer (p. 286).

Int. 3. Who were the officers of the said Quidnick Company, and who composed said company at that time? (March 22, 1882). (See page 285).

Ans. William Sprague claimed to be president of the company at that time. Benj. G. Chase claimed to be treasurer during part of that time; I do not remember how long. I have no personal knowledge who was stockholders.

Page 532 has the following:

Int. 2. * * * Have you been an officer of said corporation; if so, between what dates?

Ans. * * * I have been an officer of such corporation, its treasurer; December, 1873, to August, 1881.

There is nothing more on the subject on that page.

If there is anything in this evidence to prove William Sprague was not treasurer of that company March 22, 1883, and thus contradict the return of the sworn officer of the law, we do not appreciate the weight of evidence.

As to the statement of the brief (p. 13), "Chase *appears* to have been treasurer at this time."

There is no evidence that Chase was then or ever treasurer, except that he (Chase) claims, in March, 1882, that he was treasurer. He and witness do not remember how long. (See Ans. *supra*, p. 286).

Can a fact found in an officer's return personally, be questioned in a collateral proceeding, save by averment? (6 Comyn. Dig., Vol. Return G).

Respondents' objection, Brief, p. 13.

"It nowhere appears that said shares were advertised at least 10 days before they shall be exposed and offered for sale."

But it does appear by the return of the officer (R., p. 204) that he duly levied, on the 22d day of March, 1883, upon these shares, the A. & W. Sprague Manfg. Co., not having paid the money due on the execution to redeem the stock. The return sets forth: "I have this day sold at public auction, as previously advertised, to Evan Randolph, he being the highest bidder, for the sum of * * * (R., p. 205). And the same in reference to the levy upon the other shares.

On p. 206 will be found a copy (a part being omitted in printing) of his advertisement with the officer's return stating that the shares upon which the officer levied on the 22d day of March, 1883, would be sold at public auction on the 3d day of April, 1883.

On p. 207 will be found the certificate of the clerk of the court that "all copies of the execution, levies, and advertisements of the Quidnick stock, sold under execution are found on the record of the Court."

We submit that this return of the officer shows an exact compliance with the statute requirements. The statute required him to advertise at least 10 days before the property shall be exposed or offered for sale. He returns that he did advertise and the shares were not sold until 12 days after the levy, so that there was sufficient time for the advertisement. Will it be presumed that the officer did not do his duty, when it is seen that he attempted to do it, and had time enough in which to do it? (Foster *v.* Berry, 14 R. I., 601).

In the language of the Court in Austin *v.* Sprague, "this objection is close to cavilling."

Our answer to the argument that the provision of the statute as to advertisement must be followed, and the statute strictly construed and the authorities thereon cited by the respondents, is that all this was done. The Court holds that the title of the purchaser depends on the judgment, levy, and deed; that there need be no return (4 Wheaton, R., p. 506); cited and affirmed (11 Peters, p. 449; Voorhis *v.* U. S. Bank, which decided the same point.

3. Respondents' objection (Brief, p. 14): "The levy upon the shares of Mary and Fanny Sprague is void, having been made upon execution against the A. & W. Sprague Manfg. Co., such levy being prohibited by Pub. Stat. of R. I., chap. 155, sec. 25, p. 390."

We may as well state here as anywhere that neither of these objections, or anything akin to them, was specifically set up in any of the pleas or answers, or in any way taken in the court below, and are therefore waived in this Court.

Clements *v.* Moore, 6 Wall., R., pp. 229, 311.

All these objections but the last, if they had been so taken, could easily have been met by amendments of the officer's return, or of process, if needed.

This statutory prohibition is more serious, as it goes to our whole title to 1,403 shares, levied on as the stock of Mary and Fanny Sprague by Waterman, which would seem to require an examination of the laws of Rhode Island other than the "statute quoted."

Our claim is that our levy was made by virtue of the provisions of chap. 142, sec. 20, Gen. Stat. of R. I. (See App., 168.)

To understand the facts it will be necessary succinctly to consider Waterman's case. He was a working man in the employ of the A. & W. Sprague Manfg. Co. for 38 years, ending April, 1876, two years and a half after the failure. (R., pp. 207–208.) In October, 1873, the company owed him for 11 years' work, amounting to over $6,000, without interest. He was a non-assenting creditor; never took any of the trust notes. (R., p. 209; int. and ans. 19 and 20.)

He was promised in 1878 by Amasa Sprague, treasurer, that his accounts should be paid. At that time he told Amasa he had talked with Mr. Chafee, and Chafee refused to let him come in as one of the creditors, and then he advised him to get some legal authority in regard to it. I did so by going to Mr. Beach. I think it was two years ago last spring (1881).

Mr. Beach brought suit for Waterman against the company April 22, 1882, and attached the property held by Chafee.

In this suit Chafee appeared and filed pleas, viz., the general issue and two pleas of the statute of limitation. A motion was made to strike out the pleas filed by Mr. Chafee, and after a full hearing on the case the pleas were ordered stricken out (Waterman *v.* A. & W. Sprague Manfg. Co., 14 R. I., p. 43.

The court stating "that if the plaintiff's claim is just we cannot say that it is the defendant's duty to plead its statute;" but that it, the court, would allow Chafee to defend if he could show fraud or collusion on the part of Waterman or the company.

Afterwards, on the 2d day of March, 1883, execution was issued on the judgment, in favor of Waterman, for the sum of $12,209.57, debt and costs $26.40, which Waterman levied upon the shares of the Quidnick Company, owned by Mary and Fanny Sprague, and by the A. & W. Sprague Manufacturing Company, as already set forth, on the 22d day of March, 1883.

It is not denied that under sec. 20, chap. 142, of the Gen. Statutes, the proceedings of Waterman, in the manner of his levy, would have been valid.

On April 20, 1876, Chap. 555 of the Laws of R. I. (see Appendix, p. 214), was passed. Sec. 2 provides: Sec. 20 of said chap. 142 of the Gen. Stats. is hereby repealed. The repeal thereof, however, shall not affect any contract heretofore entered into, or obligation heretofore incurred or any remedy thereon. And said sec. 2 of said chap. is hereby amended so as to read as follows, viz:

"Sec. 21. Creditors and others having claims against any manufacturing corporation may have their remedy against the corporation as is now provided by law, or may enforce their claims by bill in equity against the said corporation, and the individual members thereof, subject to the limitations hereinbefore provided."

"Sec. 3. All acts and parts of acts inconsistent herewith are hereby repealed."

Prior to May, 1876, one Penniman had been imprisoned in jail by commitment upon execution against a corporation in which he was a stockholder, levied upon him under said 20th section "for want of goods and chattels or real estate of him or the corporation to satisfy the execution," whereupon Penniman filed a petition for a writ of *habeas corpus* releasing him from continued imprisonment. His petition was heard on May 15, 1876, before Durfee, C. J., and Matteson, J., and the Court refused the writ.

The General Assembly of R. I., enacted Chap. 600 of the Public Laws, March 27, 1877. (See Appendix, p. 215).

Sec. 1 of said act is embodied in sec. 25 of the Pub. Stat. above quoted. Sec. 2 is also inserted as sec. 22 of the same Chap. of Pub. Stat. Sec. 3. "All acts and parts of acts inconsistent herewith are hereby repealed," is not incorporated in the Pub. Stat.

Other provisions are made which we will cite hereafter.

These General Statutes and Public Laws, we shall see, are very important in construing sec. 25, chap. 155, Pub. Stat., as quoted by respondents in brief, p. 14.

Chap. 600 was passed to meet Penniman's case, as by its terms it went into effect "from and after the date of its passage," and because the next day Penniman filed a second petition for a writ of *habeas corpus*, which was heard by Durfee, C. J.; Burgess, Potter, and Stiness, J. J.

Potter delivered the opinion of the court, in which the only question argued was whether the statute impaired the "obligation of contracts" (Art. 1st, Con. U. S.). Stiness concurring with that opinion, "though somewhat reluctantly," and especially opposes that part of the law which takes away the remedy against the property; using the following language:

"Nevertheless, it cannot be denied that this act is very detrimental to the interest of the creditor, whose claim accrued under the old law. To be compelled to submit to the postponement, trouble, and expense of a new suit, while it may not impair the obligation of the contract, as that phrase has been defined, it most clearly impairs the value of that obligation; and it is easy to conceive that many corporations have received credit simply from the existing liability of the stockholders and the summary process to enforce it."

This act, therefore, comes very near to the limit of the Constitution, it does not transcend it.

I must say that the reasoning seems to be stronger which holds that an act "to lessen or take away from the extent and efficacy of the remedy to enforce a contract, legally existing when the contract was made, impairs its value and obligation." (1 Kent, 12th ed., sec. 456, note *a*; Sedgwick on Stat. and Constit. Law, 630.)

C.-J. Durfee dissented in a very able an vigorously expressed opinion some points of which I will take leave to present to the Court herein afterwards. (See Penniman's Case, 11 R. I. Reports, pp. 333–359.)

Penniman's Case was removed by writ of error to U. S. Supreme Court, was here heard and decided October term, 1881 (103 U. S., p. 714). In the opinion of this Court, p. 716, is the following:

"It is only necessary to consider that part of sec. 1 of the act above recited, which relieves a party from upon the execution. Penniman invokes that provision and no other. * * * So that if so much of the section under consideration as relieves a debtor from imprisonment for debt is constitutional, and can be severed from the other parts of the enactment, the judgment of the Supreme Court of R. I. should be affirmed.

"That part of the section which relates to the imprisonment of the debtor and that which relates to the seizure of

his property are entirely distinct and independent, and either one can stand and be operative, though the other should be declared void." * * * "The result of the decisions of this court above quoted is, that the abolition of imprisonment for debt is not of itself such a change in the remedy as impairs the obligation of the contract."

The Pub. Stats. of R. I. were reported by the commissioners of revision December, 1881, to take effect the 1st of February, 1882; and the two sections which have been already quoted were revisions incorporated thereon; a part of chapter 600, except its repealing clause, was embodied in section 25, and in section 22, were revised and embodied and the remainder of the act chap. 600 and chap. 555, in a redraft, except the repealing clauses of both chapters.

Chap. 259, sec. 2, enacted: Such and so much of the statutes contained in this revision as remained in substance the same as before the revision shall be deemed and taken to have continued in force from the time of their first enactment, and as if this revision had not been made.

Chap. 260, sec. 3: The repeal of the acts hereinbefore referred to, or hereinafter enumerated, shall not affect any act done, or any right accruing or accrued, or required or established, or any remedy for injury thereto, or any suit or proceeding had or commenced in any civil case before the time when such repeals shall take effect, but the proceedings in every such case shall be conformed whenever necessary to the provisions of the Public Statutes.

Sections 11 and 12 repealed the General Statutes of 1872, and all the statutes hereinafter mentioned passed since the publication of the General Statutes of 1872 are hereby repealed, subject to the provisions contained in the preceding sections of this chapter.

Thereupon, with certain exceptions, the Public Laws were repealed by their title and number and sessions in

which they were passed. Chapter 555 of the acts passed January session, 1876, is not repealed.

PAGE 18.

A short answer is sufficient to everything alleged by appellees under letter A of their second point.

The *res* in the present case is certain corporate stock. The *res* in the cases set up in defence by appellees is the property of a corporation. The two are entirely different. The property of a corporation is its assets. The stock of a corporation is a part of its liabilities.

The court having jurisdiction of the assets of a corporation does not thereby acquire jurisdiction of the bills payable of that corporation; and it could no more acquire jurisdiction of its stock by having possession of its assets than it could by the same means acquire jurisdiction of its bills payable.

Randolph was not a party to the proceedings in the State court, and consequently any proceedings in that court cannot affect the action of this Court as to the stock or as to the assets of the company, and if this Court shall come to the conclusion that Randolph was the actual owner of the stock under the supplemental bill the Court can place him or his representatives in possession of that property, the title to which is evidence by the stock. That this could now be done is beyond question, considering the fact that any custody or control of that property by the State court was long since ended, as fully appears by the opinion of the State court in that case, Chafee *v.* Quidnick Company (14 R. I., p. 83), from which we quote the concluding paragraph:

"Furthermore, upon a more careful study of the bill before us, we are of opinion that the petition for a receiver is not ancillary to any relief sought to be obtained under the

various prayers in the bill. The prayer for the receiver in the bill is without foundation and without meaning. There is no prayer for a foreclosure of the stock or for the winding up of the corporation, nor is there any for the application of the property of the company as such to the payment of debts. So that, as the case now stands, the appointment of a receiver on final hearing would, so far as aught now appears, practically be the appointment of a receiver in perpetuum. For no final decree which can be properly made under the bill as now framed could dispose either of the stock of the Quidnick Company, or of the property which that stock represents, and thus relieve and discharge a receiver thereof who should now be appointed."

PAGE 21.

In the first paragraph of this page the averment is reiterated that "Randolph *had personal service*" in the interpleader suit.

The return of the marshal (R., p. 154) is as follows:

"I gave to the within-named Randolph, in his hand, in Philadelphia, in the State of Pennsylvania, a true copy of this subpœna," &c.

PAGE 21 B.

The averment here made by the appellees is misleading as well as incorrect.

It is intended to convey the impression that the State court acquired jurisdiction of the stock in question by a proceeding commenced in June, 1883, nearly two months before this suit was commenced.

The facts are that a proceeding was commenced in the State court on the 18th day of June, 1883, which resulted in final decree on the 19th of July following, requiring Fanny Sprague to file an inventory of stock and a bond for three hundred thousand dollars, and also requiring Mary

Sprague to file an inventory and a bond of sixty thousand dollars (R., pp. 104–124).

Now this proceeding having been ended by the final decree, and Fanny and Mary having failed to file inventories and bonds, another proceeding entirely independent of the first, and not even ancillary to it, was commenced on the 18th day of August, 1883, fifteen days after the commencement of this suit, which said proceeding resulted in a final decree on the 25th day of August in form removing Fanny and Mary Sprague as trustees, and substituting Pomroy in their place.

But, aside from the fact that this proceeding was commenced after the commencement of this suit, it was void absolutely, in that it was a statutory proceeding based upon deeds of assignment for benefit of creditors, whereas the trusts, if trusts they were, held by Mary and Fanny Sprague, were mere entries on the transfer stock-book of the Quidnick Company, which bear no resemblance to deeds of assignment other than being in writing. They are without seal, without acknowledgment, without registry, and no delivery was ever made to Chafee.

The statutes under which these proceedings were had are set out in appellee's brief, pp. 21–22, and also in our Appendix, p. 168.

That the latter proceeding in the State court was not in continuance of the former proceeding is evidence by the fact that it was done under new petitions filed in court under another and different provision of statute than that under which the first proceeding was had (R., pp. 124–149.)

PAGE 23 C.

All the cases referred to under C relate to deeds of assignment, and not to a mere entry made on a transfer book

of a corporation, not under seal, and under which the old certificates of stock were not surrendered or any new certificates issued.

PAGE 24.

III.

The denial of our right to proceed except as a stockholder would seem to imply that Randolph had become a stockholder, an admission which we see no cause to deny.

PAGE 25.

IV.

Under this point Randolph is charged with neglect in that he did not assert his claims at the time of the sale of the property. A sufficient answer to this point is found in the injunction obtained against Randolph in the State court, a copy of which is found in the Record, pp. 296–297, the last paragraph of which is as follows:

Third. "That the said respondents, Evan Randolph and J. Cooke Lonstreth, and each of them, their agents, servants, employés, and officers, and all persons claiming under them or either of them, are hereby perpetually enjoined from acting or claiming to act as stockholders of said Quidnick Co., and from asserting any title to any of the said shares of the capital stock of said Quidnick Co., and from in any way interfering with or disturbing the complainant in his rights as holder and owner, as assignee as aforesaid, of said 4,022 shares of said capital stock of said Quidnick Co., and from voting or attempting to vote upon any of said shares of said stock, and from attending upon or holding any meetings of said Quidnick Co., and from interfering in any way with any of the affairs or business of said Quidnick Co."

PAGE 26–V.

This point relates to the execution of the trust deed, a matter which is fully discussed in our brief, pp. 48-81.

LETTER A.

To the averment that "the Circuit Court, having found the mortgage deed to be valid, has by necessary implication decided this question of execution affirmatively"—

We respond, First. The Circuit Court did not find that the mortgage deed was valid, it simply found that in the Moulton suit the Circuit Court held itself concluded by the decision in Austin *v.* Sprague, and that in this case it saw no reason for changing or modifying that conclusion, "that we are bound to follow the decision of the Supreme Court of R. I. in Austin *v.* Sprague."

But suppose the State court, in Austin *v.* Sprague, did find the deed in question to be valid on the evidence before it, would the circuit court be bound to find the same deed valid with conclusive proof before it, that all the signatures of the grantors attached to the deed were forgeries? The circuit court had many matters presented to it in this case, which we have no reasons to believe were presented to the State court in the case of Austin *v.* Sprague. For an enumeration of those matters see our brief, pp. 82–83.

Again, appellees do not even attempt in their brief to hold that the circuit court was bound to follow the decision in Austin *v.* Sprague. But they maintain that it was the duty of the court simply "to ascertain what was the law of R. I., and be governed by it;" and they admit that "the judiciary act making the laws of the several States rules of decision, does not *by its terms* apply to this case at bar." (Appellees' Brief, p. 92).

All of the evidence referred to in Record, pp. 443, 446, was objected to by the complainant below, and properly as immaterial, incompetent, and irrelevant. It is remarkable that counsel should be put in position where they would have to object to the introduction of an answer by a corporation as proof that one or more of its stockholders made and delivered a certain deed.

Did the corporation answer of its own knowledge, on information or belief, or hearsay? The evidence is that the answer is sworn to, but it is not proved by a copy of the affidavit attached to the answer, and so we are left in the dark as to the form of oath which was administered to the corporation on that occasion.

The other answers are to the effect that certain deeds were executed, but what deeds they were is left to inference, and at best swearing that a deed was executed is swearing to a conclusion of law without giving the court any knowledge of the facts on which the witness formed his conclusion of law.

The comments above made on the matters referred to in the Record, pp. 443–446, with slight variation will apply to those referred to on pp. 426–428; so far as they go they tend to prove that a large amount of property was in the hands of Chafee belonging to the A. & W. Sprague Manfg. Co.

These answers were made in May, 1876, a few days later Chafee, who was a party to "*this honest instrument*" (Ap. Br., p. 49), made affidavit as follows (R., p. 488):

I, Zechariah Chafee, under oath do state that at the time the writ in the above-entitled cause was served I had none of the estate of said defendant corporation, either directly or indirectly, in my hands or possession.

(Signed) ZECHARIAH CHAFEE.

Subscribed and sworn to in Providence, this 2d day of June, A. D. 1876, before me.

HENRY MARSH, Jr.,
Notary Public.

The writ referred to is set out in the record, p. 485, *et seq.*, and the return on the same (R., p. 487) shows that the service of it was made on the 21st day of December, 1875.

That is, Chafee swears that on the 21st day of December, 1875, he had none of the estate of the A. & W. Sprague Manfg. Co., either directly or indirectly, in his hands or possession.

That is, he either swore to what he knew was false or he based his oath on the fact that the alleged transfers of said estate to him were, as we contend, null and void, and consequently passed none of said estate to him.

But possibly this was all part and parcel of a remarkable scheme developed in the evidence of Amasa Sprague, who testified in substance (R., p. 181) that the Quidnick Company's stock was transferred to him (Chafee) for the purpose that if the Sprague creditors should demand Chafee's sale of the same and the application of the proceeds to the payment of their indebtedness, "that he could say that no transfer of any such stock had ever been made to him," and on the other hand, if the Sprague creditors should attach such stock "said Spragues could say that there had been a transfer of all of said stock made to said Chafee."

Page 27.

Appellees alleged that the alleged transfers of stock made, Dec. 2, to Chafee, is an affirmation of the execution of the trust deed by all parties concerned in it.

How it was understood by some of the parties is shown by the evidence. Mary Sprague testifies (R., p. 514) as

follows: The transfer was sent over here by George Harris, and I told him I should not sign it. In about an hour afterwards Mr. John Gardiner came, and Mr. Amasa Sprague and Mr. Gardiner said if I did not sign it, my property in the Quidnick Company would be attached. I told him I was not going to sign it to Zechariah Chafee. He told me if I signed it, it would be just the same, and I could have the interest from it as if it was my own. They told me it was only just a form to save it, and I signed it in this room, on this table (pointing to it).

Chafee testifies (R., p. 53) that said transfers of stock were made to him.

This evidence tends to prove that the entries made on the stock transfer book of the Quidnick Company of Dec. 2, 1873, were signed by the respective parties.

But the allegation in the brief, that they were made in pursuance of the provisions of the trust deed, has very little evidence in the Record to support it.

The evidence of Mary Sprague shows conclusively that her signature to one of said transfers was obtained by false pretences.

The lawyers talked "*collateral security*" to this old lady, then between 80 and 90 years of age.

On page 519 she shows, by her evidence, her understanding that the term "*collateral security*" meant a security of her stock to herself as against her creditors.

She says, in answer to cross-int. 51, that she did transfer certain stock to Chafee as *collateral security.*

x-Int. 52. As collateral security to what?

A. To save them. Just as it was with the other property, so that it would not be attached.

Int. 54. Do you still retain in your possession all the certificates for the various shares of stock referred to in your previous answers?

A. I do.

We will now consider the effect of the entries on the transfer stock-book of the Quidnick Company, under date of Dec. 2, 1873, purporting to transfer the stock in question to Chafee in pledge, &c.

Chafee made claim to the stock in question by virtue of the several entries on the stock-transfer book of the Quidnick Company under date of December 2, 1873, purporting to be transfers to him in pledge and collateral security (R., pp. 94, 95); and Pomroy makes claim to the same stock by virtue of the several entries on said book under date of December 22, 1873, purporting to be transfers of the same in trust, part to Fanny Sprague and the remainder to Mary Sprague, for the benefit of the creditors of the transferrers, respectively. (R., pp. 95, 96.)

These entries are relied on by appellees as conclusive evidence that said stock was first transferred in pledge and then subsequently in trust.

Appellees seem to forget that corporate stock can be dealt with and transferred only in accordance with the General Statutes of the State, supplemented with the provisions of the act of incorporation under which the stock is issued, and further supplemented with the provisions of the by-laws of the company issuing the stock.

It follows that said entries, while they may form a link in the evidence to prove that the stock has been actually transferred, standing alone, are no evidence whatever of the fact; and, as the act incorporating the Quidnick Company forms no part of the record nor can any part of the by-laws of said company be found in the record, there is no evidence whatever to maintain the claim on the part of the appellees that said stock was ever transferred as they claim it to have been.

But it may be claimed that under section 15 of chapter 24 of the Rhode Island public statute the Court can take

judicial knowledge of the incorporation act of the Quidnick Company.

That act is in fact identical, save as to name, with the act of incorporation of the A. & W. Sprague Manufacturing Company, which does appear in the Record, page 408, App., 170.

The provision of that act bearing upon the transfer of stock is as follows:

The stock "shall be transferable on the surrender of the old certificate upon the books of said corporation in such form and manner as said corporation shall prescribe: *Provided, however*, That no stockholder in said corporation shall have the right to transfer his shares therein without first giving ten days notice in writing of said intention and ten days refusal thereof to said corporation at the lowest price at which he will sell to any other person."

That this provision is strictly enforced by the courts of Rhode Island see the case of Sweetland *v.* The Quidnick Company (11 R. I., p. 328).

It will be seen that under this provision the company has a pre-emption right to all of its stock, and no title whatever by voluntary transfer can pass to said stock until this provision shall have been complied with, and there is no evidence that the same ever was complied with.

But suppose it had been complied with, then we are met by the law of pledge which requires that the pledgee shall have such title to the pledge that on default of the creditor he may sell the pledge at public auction to the highest bidder and deliver to him all the title which was vested in the pledgor prior to his making the pledge.

Under the provisions of the incorporation act, giving the company pre-emption right to the stock, the pledgee cannot give title to the purchaser, and it necessarily follows, inasmuch as the whole matter of the transfer depends upon

statutory provisions, and not upon common law, and the statute having not made any provisions by which the law of pledge can be carried out, that such stock cannot be put in pledge.

The only possible way by which the effect of pledging the stock could have been secured would be through a power of attorney. It would have been competent for the holders of the stock in question to have surrendered to Chafee their certificates of stock duly endorsed, accompanied with the power of attorney, authorizing him in case of default, in their name, place, and stead to sell said stock as their attorneys, first giving the company the refusal, as provided in the act of incorporation. Thus he, as attorney, could sell either to the corporation, or on its refusal, to any other party on said terms refused by the corporation.

The power of attorney might specify the trust as to the proceeds of the same with authority to the attorney to apply the proceeds in accordance with the terms of the trust.

But assuming that the Court can take judicial knowledge of the act of incorporation above referred to, it finds that the transfers in question are ineffective, and consequently it need not look into the by-laws. But if the act of incorporation should not render said entries ineffective, the Court would be still without the power to determine the question as to whether they are effective for want of a knowledge of the by-laws of the company. There is nothing in the Record to show what they are, they do not appear like the act of incorporation in any volume of law of the State, and the Court can gain no knowledge of them, they not being in evidence, even if it wished to.

But preliminary to any transfer it is shown by the act of incorporation that the stock certificate shall be surrendered. There is no evidence in the Record that the stock certificates ever were surrendered, but on the contrary Mary Sprague

and Amasa Sprague both testify that they were not surrendered.

As Chafee set up his claim in avoidance through said transfers the burden is on him to prove all of the facts necessary to give those entries on the stock-book effect.

But if the transfers in pledge are nullities, does the same result follow the entries purporting to be transfers in trust.

A transfer of personal property in trust transfers the legal title which rests at once in the trustee, without waiting for any default on the part of the creditor to cause it to vest.

It necessarily follows that the certificates of the stock should be surrendered before such title can vest; this has not been done, and here we meet with another difficulty. The trustee having the legal title to stock, is entitled to vote on the same at all meetings of the corporation. But the very purpose of the law in giving a pre-emption right to the stock of the company itself is to prevent the control of the company from going into the hands of outsiders. And it therefore follows that the legal title to stock in the Quidnick Company cannot be vested in a trustee by voluntary act of stockholder in derogation of the pre-emption and pledge right of the company.

But whatever the rights of Fanny and Mary Sprague might have been under said entries purporting to be transfers of stock, Pomroy never succeeded to those rights for lack of jurisdiction in the court substituting him in their place.

On this point see our brief, p. 97–98.

It is probably too late to question the execution of the power of attorney purporting to have been made by William Sprague in 1859, but we may refer to the fact that there is no evidence in the Record that said power of attorney was ever delivered or that it was ever acted upon. Re-

spondents offer evidence tending to prove that in a very few instances Amasa Sprague signed the name of William Sprague, but there is no evidence that it was by virtue of a power of attorney made in 1859.

PAGE 28 D.

Whatever acts of ratification may be made as to a deed lacking proper execution amount to nothing. The deed when delivered either transferred the title or it did not, and a void deed cannot be ratified.

VI. LACHES.

Randolph's suit was commenced in 1875, only two years after his claim became due and payable. Certainly limitation could not have been pleaded successfully in that action, and if it could not have been it certainly cannot be maintained as a defence in this action, in view of the fact that respondents admit that due diligence has been exercised by Randolph since obtaining his judgment at law.

As to the suit of Waterman, the Court must bear in mind that his claim was for wages for manual labor performed during a period of many years for the A. & W. Sprague Manfg. Co.

From the nature of the claim itself few persons could be found in any well-ordered community that would plead the statutes of limitations to such a claim.

But the evidence of both Waterman and of the President of the A. & W. Sprague Manfg. Co. leaves no possible doubt that the claim was kept alive by new promises. Still Chafee claims that he was so negligent in bringing his action at law that he delayed it through such a long period as to deprive himself of all protection in a court of equity.

If what Waterman did constituted laches so fatal, what is to be said of the laches of Chafee during all this period of many years in settling the estate. It would seem that Waterman had a right to ascertain what Chafee would do with the estate for the assenting creditors before Chafee could accuse Waterman of negligence. But Chafee's negligence is measured by nearly twice the number of years that Waterman waited before bringing his suit.

It is respectfully submitted that there are no proper averments in the answers on which to base a charge of negligence on the part of Waterman. And while it may be true that equity courts may give effect to limitation without the same having been specifically pleaded, it is never done where the evidence even leaves the matter in doubt, whether the claim was kept alive or not, and never done except in cases where it would not be equitable not to do it.

There is no evidence that Waterman ever asked Chafee to pay his claim within the period of nine months from November 1, 1873, during which Waterman by any possibility could avail himself of the provisions of the trust deed.

The evidence is that some years after he did ask Chafee to pay him, and that Chafee refused so to do. And it is claimed that this evidence proves acquiescence. "Acquiescence in what?"

PAGE 36.—VII.

All parties do not agree that each of the Spragues was liable for all the debts of A. & W. Sprague Manfg. Company. The capital of the company was but $1,000.000, and consequently none but the officers of the company could become liable for more than two millions of dollars (Pub. Stats. R. I., sec. 13).

PAGE 37 B.

It is unnecessary to discuss the hypothetical case of liability under a law that does not exist. It is sufficient for our purpose that the individual liability of William and Amasa Sprague became fixed by the rendition of a judgment against them in favor of Randolph.

By the consent of partners partnership assets can be used in payment of individual debts irrespective of partnership claims.

Beauregnard *v.* Case, 91 U. S., 124, and reciprocally, an individual can appropriate his assets to the payment of a partnership debt, if done in good faith, notwithstanding the claims of his individual creditors.

It is difficult to see how the creditors of the A. & W. Sprague Manufacturing Company had any greater right to the assets of its individual stockholders than had the creditors of Hoyt, Sprague & Co. to the individual assets of the members of that firm in the absence of any judgment or decree against the corporation by which the liability of the stockholders could be fixed, by reason of the fact that their liability is purely statutory and, in this case, in the nature of a penalty.

ADDENDA.

A short discussion on the effect and force of Public Statutes of R. I., Chs., 555 and 600.

Under the General Statutes of R. I., corporation creditors had, against the stockholders of the corporation, one remedy by suit in equity and another remedy by proceedings at law.

In what follows, the remedy at law alone will be considered.

Under the remedy at law several proceedings were provided for as shown by reference to sec. 20, ch. 142, of the General Statutes (App., p. 169, appellants' brief).

Public Statute 555 (App., p. 214), took away all remedy at law, as to all subsequent contracts, but preserved in full force and effect the then existing remedies at law as to all then existing contracts.

Sec. 2 of the Pub. Stats., 600, (App., p. 215), passed in 1877, in a modified form, restored the remedy at law which Pub. Stat. 555 had abolished; one of which modifications consisted in requiring the corporation creditor to obtain a judgment against the stockholder in a suit at law on his judgment against the corporation before permitting him in any way to seize the property of such stockholder.

This remedy at law, modified as above, having been restored, the creditor in the absence of said section one could have made use of four several proceedings specified below and marked A, B, C, and D; and on any subsequent contract, could have made use of either or both of the proceedings specified below and marked E and F.

That is, in the supposed absence of said section 1, section 2 having become a law, there would exist provision for the following proceedings:

I.

As respects contracts prior to the passage of the public statutes, 555:

A. In absence of property to attach, seizure of person of stockholder on writ of attachment and capias issued against the corporation in the creditors' suit against it.

B. Seizure of the property of the stockholder on writ of attachment issued against the corporation in the creditors' suit against it to be held to await result of suit against corporation.

C. In absence of property on which to levy a *fieri facias* seizure of the person of the stockholder on writ of fieri facias and capias issued on judgment against the corporation.

D. Levy on the property of the stockholder on a writ of *fieri facias* issued on final judgment against the corporation to satisfy said judgment.

II.

As respects subsequent contracts:

E. Seizure of the property of the stockholder under a writ of attachment issued in suit against him on judgment against the corporation to await result of said suit on said judgment.

(This provision results from the general law of the State.)

F. Levy on the property of the stockholder on a writ of *fieri facias* issued on final judgment against said stockholders satisfy said judgment.

The effect of the first clause of Sec. 1 of Pub Stat. 600, was to repeal the above provisions at law marked A and C.

The other repealing clause of said section is confined to the matter of attachment "*upon an execution issued upon a judgment obtained against a corporation.*"

This can apply only to the above provision of law marked E, for this is the only one of the eight provisions provided by the law in which it would be possible to attach the stockholders' property on any writ of "*execution issued upon a judgment obtained against a corporation.*"

To attempt to make said repealing clause apply to provision D above, it would be necessary to construe the word "*attachment*" as synonymous with the phrase "levy a *fieri facias.*" "To attach" is never used to denote the levying of *fi. fa.*

But we have the word "execution" in the repealing clause.

A writ of attachment is often called an execution. Bouvier uses the term "*attachment execution* or *execution attachment.*"

But the construction contended for by the appellees requires the Court to say that "attachment" means the levying of a *fieri facias*, and that the special provision contained in Pub. Stat., Ch. 555, shall be repealed, by implication, by a general statute in which that special provision is neither named nor referred to. And also to give it a construction which brings the statute within the provision of the Constitution of the United States, prohibiting any State from passing any law impairing the obligation of a contract.

The obligation of a contract refers solely to the remedy. Had the makers of the Constitution intended to preserve the entirety of the contract and at the same time permit the State legislatures to fritter away the remedy, they would have simply prohibited the State from annulling the contract or any part thereof.

The further action of the legislature of R. I. seems to be conclusive against the construction claimed by the appellees.

It repealed everything contained in the General Statutes (Pub. Stat., p. 773, sec. 11), and then by sec. 12 repealed nearly all the Public Statutes subsequently passed, designating them by chapter and date. But in this long list of statutes repealed, ch. 555 is omitted.

Now for what purpose was this statute left in force, save to preserve the remedies on contracts as they were in 1876, when that statute was passsed ?

Construing the law as contended for by appellants, force and effect are given to every part of ch. 600, and a common and natural meaning is given to every word and the statute

itself is brought in harmony with the general law governing attachments in New England, which limits the right of attachment to actions *ex contractu*, and consequently, without special provision, would not permit an attachment to be levied on the property of a stockholder in a case like this, where his liability is not a *contract liability*, saving in case where the stock has not all been paid up and certificate of the same filed, but is in the nature of a penalty, and the action against him, to fasten his liability, is one sounding in tort.

As to the case at bar it is sufficient to say that there never was issued in the Waterman case an attachment upon a judgment against a corporation.

Respectfully submitted.

BENJ. F. BUTLER,
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A. B. PATTON,
of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1889.

In Equity, No. 213.

JOHN S. JENKS, WILLIAM H. JENKS, and CHARLES RHOADES,

Executors of Evan Randolph, Deceased,

APPELLANTS,

v.

THE QUIDNICK COMPANY Et Als.

Supplemental Brief of Appellants, with Additions, filed by leave of Court given at close of Argument.

B. F. BUTLER,
O. D. BARRETT,
A. B. PATTON,
of Counsel.

WASHINGTON:
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Supreme Court of the United States.

OCTOBER TERM, 1889.

EVAN RANDOLPH'S EXECUTORS,
Appellants,
v.
QUIDNICK COMPANY *et al.*,
Appellees.

In Equity,
No. 213.

Appellant's Supplemental Brief.

RESPONDENTS' OBJECTION TO THE TITLE OF PLAINTIFF TO SHARES OF STOCK.

Respondents' Brief, page 15.

Plaintiff obtained the shares by two several lines of title.

FIRST.

THE WATERMAN LEVIES.

Horatio N. Waterman recovered judgment and execution against the A. & W. Sprague Manfg. Co. The execution was duly levied by Kent, Deputy Sheriff, March 22, 1883, on 802 shares of the capital stock of the Quidnick Company, belonging to Fanny Sprague, and also on 601 shares

of the capital stock of said company to Mary Sprague; it being represented that Fanny Sprague and Mary Sprague were stockholders in said Quidnick Company, now, and at the time of, contracted indebtedness on which the judgment was found and execution issued, and all the right and title of the said Manfg. Co., and of Fanny Sprague and Mary Sprague in and to 1858 shares of the capital stock of the Quidnick Company, were sold by said Kent at public auction to Evan Randolph, the highest bidder; and a deed therof was delivered, duly executed and acknowledged, on the 7th of said April 1883 (R., p. 22).

To this title the respondents made several objections.

1. That William Sprague was not the treasurer of the Quidnick Company at the time of the levy. In support of said objection, R., pp. 203, 207, 286, 532 are cited.

These citations, pp. 203, 207, show only the return of the officer, that on March 22, 1883, he delivered into the hands and possession of William Sprague, treasurer of the Quidnick Company, "a true and attested copy of the within execution with his doings and the date and time of day of such levy, endorsed thereon; and did the like with Amasa Sprague, treasurer of the A. & W. Sprague Manfg. Co., in his hands and possession" (pp. 203, 207). It contains nothing upon this subject of who was treasurer save the return of the officer (p. 286).

Int. 3. Who were the officers of the said Quidnick Company, and who composed said company at that time? (March 22, 1882). (See page 285).

Ans. William Sprague claimed to be president of the company at that time. Benj. G. Chase claimed to be treasurer during part of that time; I do not remember how long. I have no personal knowledge who was stockholders.

Page 532 has the following:

Int. 2. * * * Have you been an officer of said corporation; if so, between what dates?

Ans. * * * I have been an officer of such corporation, its treasurer; December, 1873, to August, 1881.

There is nothing more on the subject on that page.

If there is anything in this evidence to prove William Sprague was not treasurer of that company March 22, 1883, and thus contradict the return of the sworn officer of the law, we do not appreciate the weight of evidence.

As to the statement of the brief (p. 13), "Chase *appears* to have been treasurer at this time."

There is no evidence that Chase was then or ever treasurer, except that he (Chase) claims, in March, 1882, that he was treasurer. He and witness do not remember how long. (See Ans. *supra*, p. 286).

Can a fact found in an officer's return personally, be questioned in a collateral proceeding, save by averment? (6 Comyn. Dig., Vol. Return G).

Respondents' objection, Brief, p. 13.

"It nowhere appears that said shares were advertised at least 10 days before they shall be exposed and offered for sale."

But it does appear by the return of the officer (R., p. 204) that he duly levied, on the 22d day of March, 1883, upon these shares, the A. & W. Sprague Manfg. Co., not having paid the money due on the execution to redeem the stock. The return sets forth: "I have this day sold at public auction, as previously advertised, to Evan Randolph, he being the highest bidder, for the sum of * * * (R., p. 205). And the same in reference to the levy upon the other shares.

On p. 206 will be found a copy (a part being omitted in printing) of his advertisement with the officer's return stating that the shares upon which the officer levied on the 22d day of March, 1883, would be sold at public auction on the 3d day of April, 1883.

On p. 207 will be found the certificate of the clerk of the court that "all copies of the execution, levies, and advertisements of the Quidnick stock, sold under execution are found on the record of the Court."

We submit that this return of the officer shows an exact compliance with the statute requirements. The statute required him to advertise at least 10 days before the property shall be exposed or offered for sale. He returns that he did advertise and the shares were not sold until 12 days after the levy, so that there was sufficient time for the advertisement. Will it be presumed that the officer did not do his duty, when it is seen that he attempted to do it, and had time enough in which to do it? (Foster *v.* Berry, 14 R. I., 601).

In the language of the Court in Austin *v.* Sprague, "this objection is close to cavilling."

Our answer to the argument that the provision of the statute as to advertisement must be followed, and the statute strictly construed and the authorities thereon cited by the respondents, is that all this was done. The Court holds that the title of the purchaser depends on the judgment, levy, and deed; that there need be no return (4 Wheaton, R., p. 506); cited and affirmed (11 Peters, p. 449; Voorhis *v.* U. S. Bank, which decided the same point.

3. Respondents' objection (Brief, p. 14): "The levy upon the shares of Mary and Fanny Sprague is void, having been made upon execution against the A. & W. Sprague Manfg. Co., such levy being prohibited by Pub. Stat. of R. I., chap. 155, sec. 25, p. 390."

We may as well state here as anywhere that neither of these objections, or anything akin to them, was specifically set up in any of the pleas or answers, or in any way taken in the court below, and are therefore waived in this Court:

Clements *v.* Moore, 6 Wall., R., pp. 229, 311.

All these objections but the last, if they had been so taken, could easily have been met by amendments of the officer's return, or of process, if needed.

This statutory prohibition is more serious, as it goes to our whole title to 1,403 shares, levied on as the stock of Mary and Fanny Sprague by Waterman, which would seem to require an examination of the laws of Rhode Island other than the "statute quoted."

Our claim is that our levy was made by virtue of the provisions of chap. 142, sec. 20, Gen. Stat. of R. I. (See App., 168.)

To understand the facts it will be necessary succinctly to consider Waterman's case. He was a working man in the employ of the A. & W. Sprague Manfg. Co. for 38 years, ending April, 1876, two years and a half after the failure. (R., pp. 207–208.) In October, 1873, the company owed him for 11 years' work, amounting to over $6,000, without interest. He was a non-assenting creditor; never took any of the trust notes. (R., p. 209; int. and ans. 19 and 20.)

He was promised in 1878 by Amasa Sprague, treasurer, that his accounts should be paid. At that time he told Amasa he had talked with Mr. Chafee, and Chafee refused to let him come in as one of the creditors, and then he advised him to get some legal authority in regard to it. I did so by going to Mr. Beach. I think it was two years ago last spring (1881).

Mr. Beach brought suit for Waterman against the company April 22, 1882, and attached the property held by Chafee.

In this suit Chafee appeared and filed pleas, viz., the general issue and two pleas of the statute of limitation. A motion was made to strike out the pleas filed by Mr. Chafee, and after a full hearing on the case the pleas were ordered stricken out (Waterman *v.* A. & W. Sprague Manfg. Co., 14 R. I., p. 43.

The court stating "that if the plaintiff's claim is just we cannot say that it is the defendant's duty to plead its statute;" but that it, the court, would allow Chafee to defend if he could show fraud or collusion on the part of Waterman or the company.

Afterwards, on the 2d day of March, 1883, execution was issued on the judgment, in favor of Waterman, for the sum of $12,209.57, debt and costs $26.40, which Waterman levied upon the shares of the Quidnick Company, owned by Mary and Fanny Sprague, and by the A. & W. Sprague Manufacturing Company, as already set forth, on the 22d day of March, 1883.

It is not denied that under sec. 20, chap. 142, of the Gen. Statutes, the proceedings of Waterman, in the manner of his levy, would have been valid.

On April 20, 1876, Chap. 555 of the Laws of R. I. (see Appendix, p. 214), was passed. Sec. 2 provides: Sec. 20 of said chap. 142 of the Gen. Stats. is hereby repealed. The repeal thereof, however, shall not affect any contract heretofore entered into, or obligation heretofore incurred or any remedy thereon. And said sec. 2 of said chap. is hereby amended so as to read as follows, viz:

"Sec. 21. Creditors and others having claims against any manufacturing corporation may have their remedy against the corporation as is now provided by law, or may enforce their claims by bill in equity against the said corporation, and the individual members thereof, subject to the limitations hereinbefore provided."

"Sec. 3. All acts and parts of acts inconsistent herewith are hereby repealed."

Prior to May, 1876, one Penniman had been imprisoned in jail by commitment upon execution against a corporation in which he was a stockholder, levied upon him under said 20th section "for want of goods and chattels or real estate of him or the corporation to satisfy the execution," whereupon Penniman filed a petition for a writ of *habeas corpus* releasing him from continued imprisonment. His petition was heard on May 15, 1876, before Durfee, C. J., and Matteson, J., and the Courtrefused the writ.

The General Assembly of R. I., enacted Chap. 600 of the Public Laws, March 27, 1877. (See Appendix, p. 215).

Sec. 1 of said act is embodied in sec. 25 of the Pub. Stat. above quoted. Sec. 2 is also inserted as sec. 22 of the same Chap. of Pub. Stat. Sec. 3. "All acts and parts of acts inconsistent herewith are hereby repealed," is not incorporated in the Pub. Stat.

Other provisions are made which we will cite hereafter.

These General Statutes and Public Laws, we shall see, are very important in construing sec. 25, chap. 155, Pub. Stat., as quoted by respondents in brief, p. 14.

Chap. 600 was passed to meet Penniman's case, as by its terms it went into effect "from and after the date of its passage," and because the next day Penniman filed a second petition for a writ of *habeas corpus*, which was heard by Durfee, C. J.; Burgess, Potter, and Stiness, J. J.

Potter delivered the opinion of the court, in which the only question argued was whether the statute impaired the "obligation of contracts" (Art. 1st, Con. U. S.). Stiness concurring with that opinion, "though somewhat reluctantly," and especially opposes that part of the law which takes away the remedy against the property; using the following language:

"Nevertheless, it cannot be denied that this act is very detrimental to the interest of the creditor, whose claim accrued under the old law. To be compelled to submit to the postponement, trouble, and expense of a new suit, while it may not impair the obligation of the contract, as that phrase has been defined, it most clearly impairs the value of that obligation; and it is easy to conceive that many corporations have received credit simply from the existing liability of the stockholders and the summary process to enforce it."

This act, therefore, comes very near to the limit of the Constitution, it does not transcend it.

I must say that the reasoning seems to be stronger which holds that an act "to lessen or take away from the extent and efficacy of the remedy to enforce a contract, legally existing when the contract was made, impairs its value and obligation." (1 Kent, 12th ed., sec. 456, note *a*; Sedgwick on Stat. and Constit. Law, 630.)

C.-J. Durfee dissented in a very able an vigorously expressed opinion some points of which I will take leave to present to the Court herein afterwards. (See Penniman's Case, 11 R. I. Reports, pp. 333–359.)

Penniman's Case was removed by writ of error to U. S. Supreme Court, was here heard and decided October term, 1881 (103 U. S., p. 714). In the opinion of this Court, p. 716, is the following:

"It is only necessary to consider that part of sec. 1 of the act above recited, which relieves a party from upon the execution. Penniman invokes that provision and no other. * * * So that if so much of the section under consideration as relieves a debtor from imprisonment for debt is constitutional, and can be severed from the other parts of the enactment, the judgment of the Supreme Court of R. I. should be affirmed.

"That part of the section which relates to the imprisonment of the debtor and that which relates to the seizure of

his property are entirely distinct and independent, and either one can stand and be operative, though the other should be declared void." * * * "The result of the decisions of this court above quoted is, that the abolition of imprisonment for debt is not of itself such a change in the remedy as impairs the obligation of the contract."

The Pub. Stats. of R. I. were reported by the commissioners of revision December, 1881, to take effect the 1st of February, 1882; and the two sections which have been already quoted were revisions incorporated thereon; a part of chapter 600, except its repealing clause, was embodied in section 25, and in section 22, were revised and embodied and the remainder of the act chap. 600 and chap. 555, in a redraft, except the repealing clauses of both chapters.

Chap. 259, sec. 2, enacted: Such and so much of the statutes contained in this revision as remained in substance the same as before the revision shall be deemed and taken to have continued in force from the time of their first enactment, and as if this revision had not been made.

Chap. 260, sec. 3: The repeal of the acts hereinbefore referred to, or hereinafter enumerated, shall not affect any act done, or any right accruing or accrued, or required or established, or any remedy for injury thereto, or any suit or proceeding had or commenced in any civil case before the time when such repeals shall take effect, but the proceedings in every such case shall be conformed whenever necessary to the provisions of the Public Statutes.

Sections 11 and 12 repealed the General Statutes of 1872, and all the statutes hereinafter mentioned passed since the publication of the General Statutes of 1872 are hereby repealed, subject to the provisions contained in the preceding sections of this chapter.

Thereupon, with certain exceptions, the Public Laws were repealed by their title and number and sessions in

which they were passed. Chapter 555 of the acts passed January session, 1876, is not repealed.

Waterman's levy under the statute, section 20, must be sustained unless by a valid constitutional enactment, itself remaining unrepealed, that remedy for a claim against his debtor has been taken away; and Waterman's rights have not been saved to him by the enactment of the Public Statutes.

Waterman's action was brought April 22, 1883, 80 days after the revision of the Public Statutes took effect, February 1, 1882.

Chapter 555 of the Public Laws passed April 20, 1876, repealed said section 20, *saving* all rights "on any contract theretofore entered into or obligations theretofore incurred or any remedy thereon" from being affected by such repeal. The statute then enacts, section 21 is "hereby amended so as to read as follows, viz: Creditors and others having claims against any manufacturing corporation may have their remedy against the corporation as is now provided by law, or may enforce their claims by bill in equity against said corporation and the individual members thereof, subject to the limitations hereinbefore provided.

"Sec. 3. All acts and parts of acts inconsistent herewith are hereby repealed."

Whereupon the law stands as follows: For all past contracts and obligations, executions against the Company may be levied on the individual members who may be liable as such. Section 21, which gives the creditor at his election a bill in equity against the *officers and stockholders* who may be liable, is so amended that the creditor may have a bill in equity against the company and the individual members.

The *officers* are therein left out, and no new remedy is given against them for their misdoings in the future. In fact, chapter 555 left all past liabilities of members exactly

as they stood before; as to future liabilities it gives a bill in equity to creditors and others against the company and members, but none against the officers.

Then came Public Laws, chapter 600, passed March, 1877, as follows:

Sec. 1. No person shall hereafter be imprisoned, or be continued in prison, nor shall the property of *any such person* be attached upon an execution issued upon a judgment obtained against the corporation of which *such person* is or was a stockholder.

This put the law in this condition, if the act is constitutional, as giving a remedy against property: No person shall hereafter be imprisoned or continued in prison, nor shall the property of any *such person* be attached upon any execution obtained against a corporation in which *such* person was a stockholder.

By this section, construed according to its terms, Waterman is not prohibited from making his levy as he has done. He has not levied his execution upon the property of any "such person" who has been hereafter imprisoned or continued imprisoned upon a judgment obtained against the corporation of which such person was or is a stockholder. Penniman was not a stockholder of the A. & W. Sprague Manufacturing Company, nor had Fanny or Mary Sprague at the time of Waterman's levy ever been imprisoned. That section was inserted in the revision *ipsissimis verbis*, being section 25 of the Public Statutes. As to future imprisonment, or continuance in prison, the law has been declared both by the courts of Rhode Island and the Supreme Court to be constitutional and valid.

The statute was a special one to get Penniman out of jail. It has done its work and there let it rest. If construed as operating retroactively, it should be construed spe-

cifically, only to do what it says it does do, and has been made to do; no more.

Section 2 provides a new remedy for the creditor seeking to enforce his claim against the stockholder; to-wit, an action of debt against him upon a judgment obtained against the company in which the stockholder may have that judgment reversed and set aside for his benefit, but to be left against the company because it is not made a party to the suit. Or the creditor may be compelled to institute a like litigation in a suit in equity "conducted according to the practice and course of equity" (if the creditor can find a lawyer that knows how that can be done); and the same proceedings are open to the defendant to have in said "suit" the judgment reversed. Before the creditor can enforce his contract he must undertake two lawsuits in which the first judgment in his favor may be set aside and a new judgment be obtained against the stockholder, who may set up all the defences that the company had set up in the first case, and as many more as the stockholders may deem available.

Section 2 is copied as section 22 of chapter 155 of the Public Statutes in the revision. There are no portions of chapter 555 "inserted, revised, or re-enacted in this revision" of the Public Statutes. Upon this subject is inserted only sections 22 and 25 which are in the words of chapter 600, and that chapter is specifically repealed by chapter 260 of the repealing acts of the Public Statutes, page 781. And chapter 555 of the Public Laws is not repealed by title.

But assuming that it was in effect repealed, then section 3 of said Pub. Stat. enacts "the repeal of the acts hereinbefore referred to, or hereinafter enumerated, shall not affect any act done, or any right accruing or accrued, or acquired or established, or any remedy for any injury thereto, or any suit or proceeding had or commenced in any civil case before the time when such repeal shall take effect."

Section 4 provides, "No offence and no *penalty* or forfeiture incurred under any of the acts hereby repealed, and before the time when such repeal shall take effect, shall be affected by the repeal, except that whenever any punishment, penalty, or forfeiture shall be mitigated by the provisions of the Public Statutes, such provisions may be extended and applied to any judgment to be pronounced after any said repeal," etc.

It will be seen, therefore, that we have three results from the comparison of these statutes:

First, that chapter 555 has nowhere been revised or repealed by the public statutes, and, therefore, is left standing precisely as it was, holding all remedies theretofore valid, and giving a bill in equity or action of debt in such cases to certain parties as a remedy thereafter.

Second, if it is said that it was repealed by chapter 600, it is answered that there is nothing in chapter 555 inconsistent with or repugnant to chapter 600, save possibly a provision against continued imprisonment, and with that we have nothing to do as this Court has decided in Penniman's case, *supra*, that such part is separate from the provision regarding property.

Third, the further answer is that all of the provisions of chapter 600 have been revised and specifically repealed by the Public Statutes, so that the remedy is left to stand by the revised Public Statutes precisely where chapter 555, which remains unrepealed, left it. This seems to have been done *ex industria* in order to leave the rights of creditors unimpaired. All the other statutes upon which the revision has acted are specifically repealed.

SECTION 2 OF CHAPTER 600 AND SECTION 22 OF CHAPTER 155 ARE VOID AS REPUGNANT TO THE FIRST ARTICLE OF THE CONSTITUTION.

If the Court should decline to adopt our construction of these statutes, as to their force and effect, and hold that Waterman is prohibited from availing himself of his remedy which he had when he made his contract, then we say such substantial impairment of all remedy by a State law is forbidden by Article 1 of the Constitution of the United States, section 10: "No State shall pass any law impairing the obligations of contracts."

The law as settled by this Court seems to be this: The remedy for its enforcement at the date of the contract is a part of the contract.

Mason *v.* Haile, 12 Wheaton, Repp. 370, a former dictum of Chief-Justice Marshall has established, "that to lessen or take away from the extent and efficacy of the remedy to enforce the contract legally existing when the contract was made, impaired its value and obligation."

Prospective laws, it is agreed, may well govern after-contracts. Indeed, in the Penniman case it is decided that—

"The general doctrine of this Court on this subject may be thus stated: In modes of procedure and forms to enforce the contract the legislature has the control, and may enlarge, limit, or alter them, provided it does not deny a remedy or so embarrass it with conditions or restrictions as seriously to impair the value of the right. Bronson *v.* Kinzie, 1 How., 311; Von Hoffman *v.* City of Quincy, *supra*; Tennessee *v.* Sneed, *supra*." (Penniman case, 103 U. S. R., 714.)

This decison leaves, in this case, only a question of fact—whether this chapter 600, having given certain new remedies,

"embarrasses them with conditions or restrictions so as seriously to impair the value of the right." So that it leaves that question as a question of fact, for the determination of this Court, with the burden on him who claims that the two remedies equally establish the contract.

The first question is; What was the contract upon the facts in this case? The Court will bear with us while we set it out exactly as it was made.

The A. & W. Sprague Manufacturing Company agree with Horatio N. Waterman that if he will labor for us eleven years and allow his wages to remain on deposit in our hands, he shall have the following security: A right, if not paid on demand, to bring suit and attach all the property of the company and all the property of the stockholders of the company jointly and severally, and have execution to levy upon all or either at once at his election; and the suit against the company shall determine all questions as to the debt or liability due him between all parties in his favor.

Resting upon that contract the laborer allowed his wages to accumulate for eleven years. The company then became hopelessly insolvent. Meanwhile, by chapter 600, the contract and the obligation thereof was changed five years after his wages had accumulated under his contract then in force to this: Be it enacted that this contract shall read as follows: If you let your wages accumulate for eleven years, then you may get a judgment against the company if you can, after a contest (which was the fact). Then you may bring an action of debt upon that judgment, or you may bring a bill in equity against any or all of the stockholders in which any or all of the stockholders, as they are jointly and severally liable, may contest the validity of your claim and your judgment against the company upon any ground upon which the corporation could have contested the same when you at first sued them. Meanwhile you cannot attach

the property of any stockholder in your suit in equity, and at any time before the suit is ended they all may go into insolvency or bankruptcy or convey away all their property or have died, in which case your action does not survive as it is for a penalty, of which you must take notice, for it has been so decided in Morse *v.* Sprague (9 R. I. Rep., 541) And you must prove a new promise and agreement from the company to pay the debt or it will have expired by the statute of limitations, of which the individual stockholder can take advantage in this new suit; and meanwhile the company may have assigned their property for the benefit of their creditors or gone into bankruptcy, which would be set up by the individual stockholders.

We believe we have given exactly the effect of the change of the laws of remedy upon the obligation of the contract, and as we have before said the remedy has been determined to be a part of the obligation of the contract.

What is the obligation of a contract? We think this has been stated by Chief-Justice Durfee in Penniman's case, as well as it can be stated, or perhaps better than we can state it, in the following language:

"Without pretending to answer the question in full, I reply that the obligation of a contract is that which obliges the parties to perform it, and that which obliges the parties to perform it is the law which may be resorted to in case of default, to compel the defaulting party either to perform it, or to make compensation for not performing it. It follows that any change of the law which impairs the compulsive or remedial efficacy of the law in this respect, necessarily impairs the obligation of any contract which has been entered into under it. A contract is legally obligatory only because of the remedies given to enforce it. An oral guaranty, for instance, does not bind the guarantor, simply because no action can be maintained on it. And this is the doctrine of the Supreme Court of the United States, as

declared in Curran *v.* The State of Arkansas (15 How., U. S., 304).

"The Court there said (p. 319): 'The obligation of a contract, in the sense in which these words are used in the Constitution, is that duty of performing it which is recognized and enforced by the laws. And if the law is so changed that the means of legally enforcing this duty are materially impaired, the obligation of the contract no longer remains the same.'"

If we have stated, as I believe we have, the effect of chapter 600 upon the remedy, then we submit that the efficacy of the obligation is impaired; that the best, the most prompt, the most efficacious, and most certain means of enforcing the obligation and warding off the claims of others against the property on which a first lien might have been obtained under the first remedy, have been taken away, and a dilatory, double litigation, bristling with technical defences and impediments, and affording time in which all remedy may be rendered useless by insolvency, bankruptcy, the death or frauds of the parties, has been substituted.

That it was the intention of the legislature to make this change, acting under a spasm of indignation about the imprisonment of a man who would not take the poor debtor's oath because he could not swear that he was poor, is too obvious to need comment.

Much has been said in support of this change that it was unjust to the stockholder to take his property on an execution issued upon a judgment to which he was not a party.

There are many answers to this:

First, he was a party to the contract, and he might have been sued jointly with the company. If not made a party he could have come in to be a party in the original suit. If it was a hardship, it was because he was liable to a penalty—a penalty for what? For not so conducting his corporation

that it would not be insolvent and not pay the wages to its laborers? If it may be said one stockholder cannot control the company, the reply is, that the law has provided that any stockholder can relieve himself from his liability and not incur the penalty of the acts of his associates if he will place in the town clerk's office, where was the residence of the company, a simple notice of what his associates were doing, then he would not be liable for their misconduct for a year. And another notice at the end of that year would render him not liable for another year, and so on forever, or until he sold his stock. What does the stockholder suffer if the execution is levied upon him? Nothing but to pay the just wages of a workman who has earned them by his labor for the benefit of the stockholder. The injustice is entirely the other way. The laborer was notified that the stockholder chose to remain his debtor when he found he had filed no notice that he declined to be! and so labored on, trusting to the known thousands of the property of the stockholders.

We solemnly affirm that no greater injustice could be done by law than to make a decision that a change of the law can bring such result to this workingman.

We think we can submit this question of fact whether the present remedy is as efficacious, or in other words, whether it does not impair the obligation of this contract entered into by the creditor, to the Court, with the fullest confidence in its decision.

We are not unaware of the case of Franklyn *v.* The National Bank, 120 U. S. R., p. 747. It is not cited as an authority in this case by the defendants; it is only put upon their brief in these words: "See cases," etc., which is not the way in which citations are made. It is not an authority, nor is it claimed to be in that case.

The only question there was, the plaintiff in the circuit

court having brought an action on certain promissory notes made payable in December, 1873, and January, 1874, against the Atlantic De Laine Company, a manufacturing corporation established in the State of Rhode Island, could he maintain it in that Court. The question of law was made to depend upon a report of the referee that, prior to the making of the aforesaid note it had been judicially determined in the Supreme Court of the State of Rhode Island, that Court being the highest judicial tribunal of the said State, that the remedies provided in favor of creditors of corporations therein referred to against their stockholders by said act of June session of 1847, were exclusive of and did not include the remedy of an action on the case in favor of creditors against such stockholders.

And this Court held that there being a statute remedy for a statute penalty, the plaintiff could have no action on the case in a foreign court. The Court say :

"No case has been found where the liability imposed upon the stockholders of a corporation by the laws of the State which creates it can be pursued in a court held beyond the limits of that State. No case can be found in which such liability has been enforced by any court without a compliance with the conditions applicable to it under the legi-lative acts and judicial decisions of the State which creates the corporation and imposed the liability."

As the only statutes upon which the referee found were the prohibitory provisions of the law of 1874 there was no occasion for the discussion of any other acts of the State of Rhode Island, especially those made subsequently to that statute of inhibition.

And especially was such discussion *dicta* only, when the case found that Hoyt, the stockholder, died in May, 1874, before the suit was brought, and by the decision in Rhode Island, heretofore alluded to, all claims for penalties against

him as a stockholder of the corporation died with him. (9 R. I., *supra*.) Nor were the constructions of any of the several acts which we have been here considering brought before the court in that case.

We respectfully submit that the levy of Waterman upon the shares of Mary and Fanny Sprague was valid under the provisions of said section 20.

Unconscionable.

There is not a word in the answers of the many defendants upon this topic.

This word was not lisped in the court below.

What has Randolph done that is *unconscionable?* He has a just debt of $34,500. Being a resident of Philadelphia he brought his suit in the circuit court Oct., 1875, without at first making attachment on mense process (R., p. 186).

A Pennsylvania merchant, he probably never heard of attachment on mense process; it is solely a New England proceeding.

December 21, 1875, the Bank of Commerce brought suit in the same court, and attached all the property of the Sprague Manfg. Co. in the hands of Chafee and the Homestead Estate, Canonchet (R., p. 487). All the real estate of A. & W. Sprague Co., Mary Sprague, and Fanny Sprague, and Amasa Sprague (R., p. 495).

April 30, 1879, the Bank of Commerce, on an execution for $59,250 debt and costs, which judgment was agreed to by Chafee, levied on all the estates of the A. & W. Sprague Manfg. Co., Mary Sprague, Fanny Sprague, and Amasa

Sprague, William Sprague, which they had attached, sold the same at public auction for $6,505 (R., p. 495).

See deed of Kimball and others, to Chafee (Rec., pp. 235–36–37–38).

Sept. 5, 1879, the bank made a further levy upon Canonchet, William's homestead of 428 acres, and sold it at auction, and bid it in for $100; the identical sum for which Randolph afterwards bid it in, subject to the bank's levy. Randolph's purchase, wherefrom he failed to get anything, is made a special point in the defendant's brief as unconscionable. (Defts'. Brief, p.99.)

Again p. 98, another special point is made that Waterman & Randolph sold on two executions; Waterman's, $12,209.57; Randolph's, $34,500. Randolph bought and now claims to hold 4,022 shares of Quidnick stock, paying for all $275.

If this is unconscionable, let us look at the performance of the Bank of Commerce, with the connivance of Chafee, with an execution on $59,250 judgment got by the consent of Chafee's counsel (R., p. 492), by a blanket levy on all the property of the Sprague Co., the Spragues and the two old ladies, which was all the real estate all had in Rhode Island.

Thirty-two separate pieces of real property which we find by the report of the Valuation Committee of Creditors (Rec., p. 449, *et seq.*), where is found by them a valuation in cash items, a total of seven million nine hundred and twenty-four thousand and nine dollars ($7,924,009).

In addition, when Chafee wanted to get Canonchet five months afterwards, the Bank of Commerce levied on Canonchet as we have seen, and bid it in at $100, which afterwards Chafee sold to Moulton for $62,500 (R., p. 299).

By these performances the Bank of Commerce got a levy upon all mills, real estate, homesteads, dwellings, farms, and

the Cranston print-works, whereby each bid of less than $1,000 credited on the execution a million dollars of this vast property was covered up from attaching non-assenting creditors.

Which of the two prices is unconscionable?

But, to the transaction, what was the whole of it? Chafee bought in this title of the bank, paid $100,000 for it ($40,000 more than its whole debt), and had it held in the hands of third parties as a title against each one and all non-assenting creditors who should try to secure their just claim by levy upon any of the Sprague real estate. The personal assets of the Sprague Manfg. Co. having been passed over to the Quidnick Co.; so that, that Chafee could and did swear, that he had none of the Sprague property in his hands, directly or indirectly, in 1876. (R., p. 488).

When, therefore, Chafee advertised, on the 10th day of July, 1882 (Rec., p. 303), that he, trustee, would sell Canonchet on the 24th day of August, as such trustee (R., p. 299), Randolph, on the 14th of August, sued out his writ of *mesne* process and attached Canonchet, desiring to try the validity of the trust deed thereby, and thus collect his judgment.

He was met, not by the trust deed title, but by the bank title under its levy set up by Chafee (R., p. 186). And see Chafee's answer in the Moulton suit (R., p. 306).

Randolph pressed his suit to judgment at the next term of the Circuit Court, and levied on Canonchet, as the bank had done before him, it taking no step, apparently, to validate its levy by taking possession. The Moulton case developed the fact that the title had passed to the bank.

Randolph found himself without any security or means of enforcing his judgment on any of the property which could have passed by the trust deed.

He therefore levied on the stock of William and Amasa Sprague in the Quidnick Company which had never been transferred, and directly brought this suit to have his title confirmed.

He bought under the Waterman levy at auction, as the highest bidder, the shares owned by the A. & W. Sprague Manufacturing Co., and Fanny and Mary Sprague because in his opinion, a mere minority of the shares under his own levy would have been quite valueless to him.

The former owners of the stock after his suit was brought transferred the certificates of the stock so levied upon, and gave him certificate thereof, which he now holds, asking that his title may be quieted.

What is there in any action of Randolph out of the usual course of a creditor, levying upon the property of his debtors who have covered up their property by conveyances made for the purpose of delaying and hindering their creditors.

Why should he, without a particle of evidence, upon mere innendo, be charged with conspiracy, connivance, or unconscionable action?

Is he to have his character as well as his property taken away?

Amasa Sprague testifies that he does not know Evan Randolph, nor has ever seen him (R., p. 176, Int. 6.)

As to the many such charges against Waterman.

They are entirely groundless, as we have before shown in our brief with references to the proper pages of the record.

Waterman had worked thirty-eight years for the Sprague Manfg. Co. in all; being employed by Chafee at last—after the failure the business passed into the hands of Chafee—he was employed three years longer with continued promises to have his arrearages paid.

Tired, in 1878 he called upon Chafee to pay him what was due him, or let him come in with the other creditors; this Chafee refused. He reported this to Amasa Sprague, who promised payment, and he told him he must apply to legal authority.

He did apply to William Beach, a respectable counsellor, not connected with either party in the litigation, who brought suit for him, prosecuted it to final judgment in spite of defences set up by Chafee who appeared against it, got his execution and levied it upon any property of the Spragues that seemed to be uncovered.

At that levy Mr. Austin bought some shares, once property of William Sprague, and brought a bill to set aside the fraudulent trust deed of November 1, 1873, which stood in his way.

And his case, Austin *v.* Sprague, was decided against him upon the sole ground that the trust deed was not fraudulent on its face.

In that case none of the defences against his title through Waterman's levy were set up, which have been since hatched up to put in this case now for the first time in the Supreme Court, to take away the hard earnings of years.

What has this old working man done save to try to demonstrate that "the laborer is worthy of his hire," by appealing to the laws and the courts to do him justice?

PAGE 18.

A short answer is sufficient to everything alleged by appellees under letter A of their second point.

The *res* in the present case is certain corporate stock. The *res* in the cases set up in defence by appellees is the property of a corporation. The two are entirely different. The property of a corporation is its assets. The stock of a corporation is a part of its liabilities.

The court having jurisdiction of the assets of a corporation does not thereby acquire jurisdiction of the bills payable of that corporation; and it could no more acquire jurisdiction of its stock by having possession of its assets than it could by the same means acquire jurisdiction of its bills payable.

Randolph was not a party to the proceedings in the State court, and consequently any proceedings in that court cannot affect the action of this Court as to the stock or as to the assets of the company, and if this Court shall come to the conclusion that Randolph was the actual owner of the stock under the supplemental bill the Court can place him or his representatives in possession of that property, the title to which is evidence by the stock. That this could now be done is beyond question, considering the fact that any custody or control of that property by the State court was long since ended, as fully appears by the opinion of the State court in that case, Chafee *v.* Quidnick Company (14 R. I., p. 83), from which we quote the concluding paragraph:

"Furthermore, upon a more careful study of the bill before us, we are of opinion that the petition for a receiver is not ancillary to any relief sought to be obtained under the

various prayers in the bill. The prayer for the receiver in the bill is without foundation and without meaning. There is no prayer for a foreclosure of the stock or for the winding up of the corporation, nor is there any for the application of the property of the company as such to the payment of debts. So that, as the case now stands, the appointment of a receiver on final hearing would, so far as aught now appears, practically be the appointment of a receiver in perpetuum. For no final decree which can be properly made under the bill as now framed could dispose either of the stock of the Quidnick Company, or of the property which that stock represents, and thus relieve and discharge a receiver thereof who should now be appointed."

PAGE 21.

In the first paragraph of this page the averment is reiterated that "Randolph *had personal service*" in the interpleader suit.

The return of the marshal (R., p. 154) is as follows:

"I gave to the within-named Randolph, in his hand, in Philadelphia, in the State of Pennsylvania, a true copy of this subpœna," &c.

PAGE 21 B.

The averment here made by the appellees is misleading as well as incorrect.

It is intended to convey the impression that the State court acquired jurisdiction of the stock in question by a proceeding commenced in June, 1883, nearly two months before this suit was commenced.

The facts are that a proceeding was commenced in the State court on the 18th day of June, 1883, which resulted in final decree on the 19th of July following, requiring Fanny Sprague to file an inventory of stock and a bond for three hundred thousand dollars, and also requiring Mary

Sprague to file an inventory and a bond of sixty thousand dollars (R., pp. 104–124).

Now this proceeding having been ended by the final decree, and Fanny and Mary having failed to file inventories and bonds, another proceeding entirely independent of the first, and not even ancillary to it, was commenced on the 18th day of August, 1883, fifteen days after the commencement of this suit, which said proceeding resulted in a final decree on the 25th day of August in form removing Fanny and Mary Sprague as trustees, and substituting Pomroy in their place.

But, aside from the fact that this proceeding was commenced after the commencement of this suit, it was void absolutely, in that it was a statutory proceeding based upon deeds of assignment for benefit of creditors, whereas the trusts, if trusts they were, held by Mary and Fanny Sprague, were mere entries on the transfer stock-book of the Quidnick Company, which bear no resemblance to deeds of assignment other than being in writing. They are without seal, without acknowledgment, without registry, and no delivery was ever made to Chafee.

The statutes under which these proceedings were had are set out in appellee's brief, pp. 21–22, and also in our Appendix, p. 168.

That the latter proceeding in the State court was not in continuance of the former proceeding is evidence by the fact that it was done under new petitions filed in court under another and different provision of statute than that under which the first proceeding was had (R., pp. 124–149.)

PAGE 23 C.

All the cases referred to under C relate to deeds of assignment, and not to a mere entry made on a transfer book

of a corporation, not under seal, and under which the old certificates of stock were not surrendered or any new certificates issued.

PAGE 24.

III.

The denial of our right to proceed except as a stockholder would seem to imply that Randolph had become a stockholder, an admission which we see no cause to deny.

PAGE 25.

IV.

Under this point Randolph is charged with neglect in that he did not assert his claims at the time of the sale of the property. A sufficient answer to this point is found in the injunction obtained against Randolph in the State court, a copy of which is found in the Record, pp. 296–297, the last paragraph of which is as follows:

Third. "That the said respondents, Evan Randolph and J. Cooke Lonstreth, and each of them, their agents, servants, employés, and officers, and all persons claiming under them or either of them, are hereby perpetually enjoined from acting or claiming to act as stockholders of said Quidnick Co., and from asserting any title to any of the said shares of the capital stock of said Quidnick Co., and from in any way interfering with or disturbing the complainant in his rights as holder and owner, as assignee as aforesaid, of said 4,022 shares of said capital stock of said Quidnick Co., and from voting or attempting to vote upon any of said shares of said stock, and from attending upon or holding any meetings of said Quidnick Co., and from interfering in any way with any of the affairs or business of said Quidnick Co."

PAGE 26–V.

This point relates to the execution of the trust deed, a matter which is fully discussed in our brief, pp. 48-81.

LETTER A.

To the averment that "the Circuit Court, having found the mortgage deed to be valid, has by necessary implication decided this question of execution affirmatively"—

We respond, First. The Circuit Court did not find that the mortgage deed was valid, it simply found that in the Moulton suit the Circuit Court held itself concluded by the decision in Austin *v.* Sprague, and that in this case it saw no reason for changing or modifying that conclusion, "that we are bound to follow the decision of the Supreme Court of R. I. in Austin *v.* Sprague."

But suppose the State court, in Austin *v.* Sprague, did find the deed in question to be valid on the evidence before it, would the circuit court be bound to find the same deed valid with conclusive proof before it, that all the signatures of the grantors attached to the deed were forgeries? The circuit court had many matters presented to it in this case, which we have no reasons to believe were presented to the State court in the case of Austin *v.* Sprague. For an enumeration of those matters see our brief, pp. 82–83.

Again, appellees do not even attempt in their brief to hold that the circuit court was bound to follow the decision in Austin *v.* Sprague. But they maintain that it was the duty of the court simply "to ascertain what was the law of R. I., and be governed by it;" and they admit that "the judiciary act making the laws of the several States rules of decision, does not *by its terms* apply to this case at bar." (Appellees' Brief, p. 92).

All of the evidence referred to in Record, pp. 443, 446, was objected to by the complainant below, and properly as immaterial, incompetent, and irrelevant. It is remarkable that counsel should be put in position where they would have to object to the introduction of an answer by a corporation as proof that one or more of its stockholders made and delivered a certain deed.

Did the corporation answer of its own knowledge, on information or belief, or hearsay? The evidence is that the answer is sworn to, but it is not proved by a copy of the affidavit attached to the answer, and so we are left in the dark as to the form of oath which was administered to the corporation on that occasion.

The other answers are to the effect that certain deeds were executed, but what deeds they were is left to inference, and at best swearing that a deed was executed is swearing to a conclusion of law without giving the court any knowledge of the facts on which the witness formed his conclusion of law.

The comments above made on the matters referred to in the Record, pp. 443–446, with slight variation will apply to those referred to on pp. 426–428; so far as they go they tend to prove that a large amount of property was in the hands of Chafee belonging to the A. & W. Sprague Manfg. Co.

These answers were made in May, 1876, a few days later Chafee, who was a party to "*this honest instrument*" (Ap. Br., p. 49), made affidavit as follows (R., p. 488):

I, Zechariah Chafee, under oath do state that at the time the writ in the above-entitled cause was served I had none of the estate of said defendant corporation, either directly or indirectly, in my hands or possession.

(Signed) ZECHARIAH CHAFEE.

Subscribed and sworn to in Providence, this 2d day of June, A. D. 1876, before me.

HENRY MARSH, JR.,
Notary Public.

The writ referred to is set out in the record, p. 485, *et seq.*, and the return on the same (R., p. 487) shows that the service of it was made on the 21st day of December, 1875.

That is, Chafee swears that on the 21st day of December, 1875, he had none of the estate of the A. & W. Sprague Manfg. Co., either directly or indirectly, in his hands or possession.

That is, he either swore to what he knew was false or he based his oath on the fact that the alleged transfers of said estate to him were, as we contend, null and void, and consequently passed none of said estate to him.

But possibly this was all part and parcel of a remarkable scheme developed in the evidence of Amasa Sprague, who testified in substance (R., p. 181) that the Quidnick Company's stock was transferred to him (Chafee) for the purpose that if the Sprague creditors should demand Chafee's sale of the same and the application of the proceeds to the payment of their indebtedness, "that he could say that no transfer of any such stock had ever been made to him," and on the other hand, if the Sprague creditors should attach such stock "said Spragues could say that there had been a transfer of all of said stock made to said Chafee."

PAGE 27.

Appellees alleged that the alleged transfers of stock made, Dec. 2, to Chafee, is an affirmation of the execution of the trust deed by all parties concerned in it.

How it was understood by some of the parties is shown by the evidence. Mary Sprague testifies (R., p. 514) as

follows: The transfer was sent over here by George Harris, and I told him I should not sign it. In about an hour afterwards Mr. John Gardiner came, and Mr. Amasa Sprague and Mr. Gardiner said if I did not sign it, my property in the Quidnick Company would be attached. I told him I was not going to sign it to Zechariah Chafee. He told me if I signed it, it would be just the same, and I could have the interest from it as if it was my own. They told me it was only just a form to save it, and I signed it in this room, on this table (pointing to it).

Chafee testifies (R., p. 53) that said transfers of stock were made to him.

This evidence tends to prove that the entries made on the stock transfer book of the Quidnick Company of Dec. 2, 1873, were signed by the respective parties.

But the allegation in the brief, that they were made in pursuance of the provisions of the trust deed, has very little evidence in the Record to support it.

The evidence of Mary Sprague shows conclusively that her signature to one of said transfers was obtained by false pretences.

The lawyers talked "*collateral security*" to this old lady, then between 80 and 90 years of age.

On page 519 she shows, by her evidence, her understanding that the term "*collateral security*" meant a security of her stock to herself as against her creditors.

She says, in answer to cross-int. 51, that she did transfer certain stock to Chafee as *collateral security*.

x-Int. 52. As collateral security to what?

A. To save them. Just as it was with the other property, so that it would not be attached.

Int. 54. Do you still retain in your possession all the certificates for the various shares of stock referred to in your previous answers?

A. I do.

We will now consider the effect of the entries on the transfer stock-book of the Quidnick Company, under date of Dec. 2, 1873, purporting to transfer the stock in question to Chafee in pledge, &c.

Chafee made claim to the stock in question by virtue of the several entries on the stock-transfer book of the Quidnick Company under date of December 2, 1873, purporting to be transfers to him in pledge and collateral security (R., pp. 94, 95); and Pomroy makes claim to the same stock by virtue of the several entries on said book under date of December 22, 1873, purporting to be transfers of the same in trust, part to Fanny Sprague and the remainder to Mary Sprague, for the benefit of the creditors of the transferrers, respectively. (R., pp. 95, 96.)

These entries are relied on by appellees as conclusive evidence that said stock was first transferred in pledge and then subsequently in trust.

Appellees seem to forget that corporate stock can be dealt with and transferred only in accordance with the General Statutes of the State, supplemented with the provisions of the act of incorporation under which the stock is issued, and further supplemented with the provisions of the by-laws of the company issuing the stock.

It follows that said entries, while they may form a link in the evidence to prove that the stock has been actually transferred, standing alone, are no evidence whatever of the fact; and, as the act incorporating the Quidnick Company forms no part of the record nor can any part of the by-laws of said company be found in the record, there is no evidence whatever to maintain the claim on the part of the appellees that said stock was ever transferred as they claim it to have been.

But it may be claimed that under section 15 of chapter 24 of the Rhode Island public statute the Court can take

judicial knowledge of the incorporation act of the Quidnick Company.

That act is in fact identical, save as to name, with the act of incorporation of the A. & W. Sprague Manufacturing Company, which does appear in the Record, page 408, App., 170.

The provision of that act bearing upon the transfer of stock is as follows:

The stock "shall be transferable on the surrender of the old certificate upon the books of said corporation in such form and manner as said corporation shall prescribe: *Provided, however*, That no stockholder in said corporation shall have the right to transfer his shares therein without first giving ten days notice in writing of said intention and ten days refusal thereof to said corporation at the lowest price at which he will sell to any other person."

That this provision is strictly enforced by the courts of Rhode Island see the case of Sweetland *v.* The Quidnick Company (11 R. I., p. 328).

It will be seen that under this provision the company has a pre-emption right to all of its stock, and no title whatever by voluntary transfer can pass to said stock until this provision shall have been complied with, and there is no evidence that the same ever was complied with.

But suppose it had been complied with, then we are met by the law of pledge which requires that the pledgee shall have such title to the pledge that on default of the creditor he may sell the pledge at public auction to the highest bidder and deliver to him all the title which was vested in the pledgor prior to his making the pledge.

Under the provisions of the incorporation act, giving the company pre-emption right to the stock, the pledgee cannot give title to the purchaser, and it necessarily follows, inasmuch as the whole matter of the transfer depends upon

statutory provisions, and not upon common law, and the statute having not made any provisions by which the law of pledge can be carried out, that such stock cannot be put in pledge.

The only possible way by which the effect of pledging the stock could have been secured would be through a power of attorney. It would have been competent for the holders of the stock in question to have surrendered to Chafee their certificates of stock duly endorsed, accompanied with the power of attorney, authorizing him in case of default, in their name, place, and stead to sell said stock as their attorneys, first giving the company the refusal, as provided in the act of incorporation. Thus he, as attorney, could sell either to the corporation, or on its refusal, to any other party on said terms refused by the corporation.

The power of attorney might specify the trust as to the proceeds of the same with authority to the attorney to apply the proceeds in accordance with the terms of the trust.

But assuming that the Court can take judicial knowledge of the act of incorporation above referred to, it finds that the transfers in question are ineffective, and consequently it need not look into the by-laws. But if the act of incorporation should not render said entries ineffective, the Court would be still without the power to determine the question as to whether they are effective for want of a knowledge of the by-laws of the company. There is nothing in the Record to show what they are, they do not appear like the act of incorporation in any volume of law of the State, and the Court can gain no knowledge of them, they not being in evidence, even if it wished to.

But preliminary to any transfer it is shown by the act of incorporation that the stock certificate shall be surrendered. There is no evidence in the Record that the stock certificates ever were surrendered, but on the contrary Mary Sprague

and Amasa Sprague both testify that they were not surrendered.

As Chafee set up his claim in avoidance through said transfers the burden is on him to prove all of the facts necessary to give those entries on the stock-book effect.

But if the transfers in pledge are nullities, does the same result follow the entries purporting to be transfers in trust.

A transfer of personal property in trust transfers the legal title which rests at once in the trustee, without waiting for any default on the part of the creditor to cause it to vest.

It necessarily follows that the certificates of the stock should be surrendered before such title can vest; this has not been done, and here we meet with another difficulty. The trustee having the legal title to stock, is entitled to vote on the same at all meetings of the corporation. But the very purpose of the law in giving a pre-emption right to the stock of the company itself is to prevent the control of the company from going into the hands of outsiders. And it therefore follows that the legal title to stock in the Quidnick Company cannot be vested in a trustee by voluntary act of stockholder in derogation of the pre-emption and pledge right of the company.

But whatever the rights of Fanny and Mary Sprague might have been under said entries purporting to be transfers of stock, Pomroy never succeeded to those rights for lack of jurisdiction in the court substituting him in their place.

On this point see our brief, p. 97–98.

It is probably too late to question the execution of the power of attorney purporting to have been made by William Sprague in 1859, but we may refer to the fact that there is no evidence in the Record that said power of attorney was ever delivered or that it was ever acted upon. Re-

spondents offer evidence tending to prove that in a very few instances Amasa Sprague signed the name of William Sprague, but there is no evidence that it was by virtue of a power of attorney made in 1859.

PAGE 28 D.

Whatever acts of ratification may be made as to a deed lacking proper execution amount to nothing. The deed when delivered either transferred the title or it did not, and a void deed cannot be ratified.

VI. LACHES.

Randolph's suit was commenced in 1875, only two years after his claim became due and payable. Certainly limitation could not have been pleaded successfully in that action, and if it could not have been it certainly cannot be maintained as a defence in this action, in view of the fact that respondents admit that due diligence has been exercised by Randolph since obtaining his judgment at law.

As to the suit of Waterman, the Court must bear in mind that his claim was for wages for manual labor performed during a period of many years for the A. & W. Sprague Manfg. Co.

From the nature of the claim itself few persons could be found in any well-ordered community that would plead the statutes of limitations to such a claim.

But the evidence of both Waterman and of the President of the A. & W. Sprague Manfg. Co. leaves no possible doubt that the claim was kept alive by new promises. Still Chafee claims that he was so negligent in bringing his action at law that he delayed it through such a long period as to deprive himself of all protection in a court of equity.

If what Waterman did constituted laches so fatal, what is to be said of the laches of Chafee during all this period of many years in settling the estate. It would seem that Waterman had a right to ascertain what Chafee would do with the estate for the assenting creditors before Chafee could accuse Waterman of negligence. But Chafee's negligence is measured by nearly twice the number of years that Waterman waited before bringing his suit.

It is respectfully submitted that there are no proper averments in the answers on which to base a charge of negligence on the part of Waterman. And while it may be true that equity courts may give effect to limitation without the same having been specifically pleaded, it is never done where the evidence even leaves the matter in doubt, whether the claim was kept alive or not, and never done except in cases where it would not be equitable not to do it.

There is no evidence that Waterman ever asked Chafee to pay his claim within the period of nine months from November 1, 1873, during which Waterman by any possibility could avail himself of the provisions of the trust deed.

The evidence is that some years after he did ask Chafee to pay him, and that Chafee refused so to do. And it is claimed that this evidence proves acquiescence. "Acquiescence in what?"

PAGE 36.—VII.

All parties do not agree that each of the Spragues was liable for all the debts of A. & W. Sprague Manfg. Company. The capital of the company was but $1,000,000, and consequently none but the officers of the company could become liable for more than two millions of dollars (Pub. Stats. R. I., sec. 13).

PAGE 37 B.

It is unnecessary to discuss the hypothetical case of liability under a law that does not exist. It is sufficient for our purpose that the individual liability of William and Amasa Sprague became fixed by the rendition of a judgment against them in favor of Randolph.

By the consent of partners partnership assets can be used in payment of individual debts irrespective of partnership claims.

Beauregard *v.* Case, 91 U. S., 124, and reciprocally, an individual can appropriate his assets to the payment of a partnership debt, if done in good faith, notwithstanding the claims of his individual creditors.

It is difficult to see how the creditors of the A. & W. Sprague Manufacturing Company had any greater right to the assets of its individual stockholders than had the creditors of Hoyt, Sprague & Co. to the individual assets of the members of that firm in the absence of any judgment or decree against the corporation by which the liability of the stockholders could be fixed, by reason of the fact that their liability is purely statutory and, in this case, in the nature of a penalty.

ADDENDA.

A short discussion on the effect and force of Public Statutes of R. I., Chs., 555 and 600.

Under the General Statutes of R. I., corporation creditors had, against the stockholders of the corporation, one remedy by suit in equity and another remedy by proceedings at law.

In what follows, the remedy at law alone will be considered.

Under the remedy at law several proceedings were provided for as shown by reference to sec. 20, ch. 142, of the General Statutes (App., p. 169, appellants' brief).

Public Statute 555 (App., p. 214), took away all remedy at law, as to all subsequent contracts, but preserved in full force and effect the then existing remedies at law as to all then existing contracts.

Sec. 2 of the Pub. Stats., 600, (App., p. 215), passed in 1877, in a modified form, restored the remedy at law which Pub. Stat. 555 had abolished; one of which modifications consisted in requiring the corporation creditor to obtain a judgment against the stockholder in a suit at law on his judgment against the corporation before permitting him in any way to seize the property of such stockholder.

This remedy at law, modified as above, having been restored, the creditor in the absence of said section one could have made use of four several proceedings specified below and marked A, B, C, and D; and on any subsequent conract, could have made use of either or both of the proceedings specified below and marked E and F.

That is, in the supposed absence of said section 1, section 2 having become a law, there would exist provision for the following proceedings:

I.

As respects contracts prior to the passage of the public statutes, 555:

A. In absence of property to attach, seizure of person of stockholder on writ of attachment and capias issued against the corporation in the creditors' suit against it.

B. Seizure of the property of the stockholder on writ of attachment issued against the corporation in the creditors' suit against it to be held to await result of suit against corporation.

C. In absence of property on which to levy a *fieri facias* seizure of the person of the stockholder on writ of fieri facias and capias issued on judgment against the corporation.

D. Levy on the property of the stockholder on a writ of *fieri facias* issued on final judgment against the corporation to satisfy said judgment.

II.

As respects subsequent contracts:

E. Seizure of the property of the stockholder under a writ of attachment issued in suit against him on judgment against the corporation to await result of said suit on said judgment.

(This provision results from the general law of the State.)

F. Levy on the property of the stockholder on a writ of *fieri facias* issued on final judgment against said stockholders satisfy said judgment.

The effect of the first clause of Sec. 1 of Pub Stat. 600, was to repeal the above provisions at law marked A and C.

The other repealing clause of said section is confined to the matter of attachment "*upon an execution issued upon a judgment obtained against a corporation.*"

This can apply only to the above provision of law marked E, for this is the only one of the eight provisions provided by the law in which it would be possible to attach the stockholders' property on any writ of "*execution issued upon a judgment obtained against a corporation.*"

To attempt to make said repealing clause apply to provision D above, it would be necessary to construe the word "*attachment*" as synonymous with the phrase "levy a *fieri facias.*" "To attach" is never used to denote the levying of *fi. fa.*

But we have the word "execution" in the repealing clause.

A writ of attachment is often called an execution. Bouvier uses the term "*attachment execution* or *execution attachment.*"

But the construction contended for by the appellees requires the Court to say that "attachment" means the levying of a *fieri facias*, and that the special provision contained in Pub. Stat., Ch. 555, shall be repealed, by implication, by a general statute in which that special provision is neither named nor referred to. And also to give it a construction which brings the statute within the provision of the Constitution of the United States, prohibiting any State from passing any law impairing the obligation of a contract.

The obligation of a contract refers solely to the remedy. Had the makers of the Constitution intended to preserve the entirety of the contract and at the same time permit the State legislatures to fritter away the remedy, they would have simply prohibited the State from annulling the contract or any part thereof.

The further action of the legislature of R. I. seems to be conclusive against the construction claimed by the appellees.

It repealed everything contained in the General Statutes (Pub. Stat., p. 773, sec. 11), and then by sec. 12 repealed nearly all the Public Statutes subsequently passed, designating them by chapter and date. But in this long list of statutes repealed, ch. 555 is omitted.

Now for what purpose was this statute left in force, save to preserve the remedies on contracts as they were in 1876, when that statute was passsed ?

Construing the law as contended for by appellants, force and effect are given to every part of ch. 600, and a common and natural meaning is given to every word and the statute

itself is brought in harmony with the general law governing attachments in New England, which limits the right of attachment to actions *ex contractu*, and consequently, without special provision, would not permit an attachment to be levied on the property of a stockholder in a case like this, where his liability is not a *contract liability*, saving in case where the stock has not all been paid up and certificate of the same filed, but is in the nature of a penalty, and the action against him, to fasten his liability, is one sounding in tort.

As to the case at bar it is sufficient to say that there never was issued in the Waterman case an attachment upon a judgment against a corporation.

Respectfully submitted.

BENJ. F. BUTLER,
O. D. BARRETT,
A. B. PATTON,
of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1889.

JOHN S. JENCKS, WILLIAM H. JENCKS and CHARLES RHOADES, Executors of EVAN RANDOLPH, deceased, appellants,

vs.

THE QUIDNICK COMPANY, GORHAM, P. POMROY, Assignee, &c., ZECHARIAH CHAFFEE, trustee and assignee of the A. and W. SPRAGUE MANUFACTURING COMPANY, *et al.*

No. 213.

Appellants' Motion for Writ of Certiorari for Diminution of Record.

Come now appellants, by O. D. Barrett their counsel, and suggest dimunition of the record, in this, to wit:

1. That the original process and return thereon, made in the case of *Gorham P. Pomroy, assignee*, vs. *Evan Randolph et al.*, Equity, No. 2161, in the State Court of Rhode Island are omitted from the transcript.

That the order for process in said suit reads as follows, to wit:

"Providence, Sc. } Supreme Court, Term, 18.

"G. P. POMROY, assignee,
vs.
"WM. SPRAGUE *et al.*

"Let Subpœna issue returnable forthwith and citation on motion for preliminary injunction, issue returnable at 4 o'clock P. M., 4th September, 2883.

"Endorsed on back. Eq., 1161.

"Order for Subpœna an citation 3d September, 1883.

"Enter.

"G. M. CARPENTER, JR."

That the Subpœna issued in accordance with said order, reads as follows:

"The State of Rhode Island and Providence Plantations..

"To William Sprague, Amasa Sprague, Mary Sprague, Fanny Sprague, the A. & W. Sprague Manufacturing Company, Zechariah Chafee, the Quidnick Company, Evan Randolph, and J. Cooke Longstreth.

"*Greeting*:

"For certain causes offered to our Supreme Court, in said County, in Chancery, we hereby command and strictly enjoin you that, laying aside all other matters and things, and notwithstanding any excuse, you personally appear before said court, at Providence, in said county forthwith, and then and there full, true and perfect answer to make, upon solemn oath or affirmation to the bill of complaint of Gorham P. Pomroy, assignee, now filed of record in said court, in said county, and to do, and receive whatever our said court shall order against you in the premises in this behalf.

"Hereof fail not, under the pains and penalties that may accrue in consequence of neglect thereof. And the Sheriff of said County of Providence, or his deputy, or the Sheriffs or their deputies of other Counties are hereby com-

manded to make service of this writ by reading the same to the said respondents, or by leaving a true and attested copy thereof, at their last and usual places of abode forthwith.

"Hereof make true return forthwith.

"Witness, Hon. Thomas Durfee, our Chief Justice, at Providence, this third day of September, A. D. 1883."

"CHARLES BLAKE, *Clerk.*

"Endorsed on back,
"No. 2161,
"Subpoena."

That such of the returns on said original process as relate to the service had of said process on said Evan Randolph, read as follows, to wit:

"PROVIDENCE, *Sc.*
"PROVIDENCE, *September 4th*, 1883.

"I have this day made service of this subpœna by leaving an attested copy of the same at the last and usual places of abode of William Sprague, Young Orchard avenue, and Zechariah Chafee, and by reading the same to Mary Sprague and Fanny Sprague, in the presence and hearing of each of them, and by reading the same to Elisha C. Mowry as attorney of Evan Randolph and J. Cooke Longstreth, in his presence and hearing as the represented attorney of said Randolph & Longstreth.

Service,	$3.75
Copies	1.50
Travel	50
	$5.75

LYMAN UPHAM,
Deputy Sheriff.

PROVIDENCE, *&c.*, IN NEW PELTZ,
ULSTER COUNTY, NEW YORK,
This 11th day of September A. D. 1883.

I have made service of this subpœna by leaving a true and attested copy of the same with J. Cooke Longstreth in his hands and possession. And in Fort Washington, Pennsylvania, on the 10th day of September, A. D. 1883, I have made service of this subpœna upon Evan Randolph, by leaving a true and attested copy of the same with him in his hands and possession.

WALTER C. SMITH,
A Disinterested Person.

PROVIDENCE, *&c.*

I, Walter C. Smith, of the City and County of Providence, State of Rhode Island, make affidavit that the above return by me signed is true, and that I am in no way interested in the matter referred to in the within Subpœna.

WALTER C. SMITH.

Providence, September 15th, A. D. 1823.

Subscribed and sworn to before me,

CHARLES H. PARKHURST,
Notary Public.

Said suit was based solely on a claim to ownership of *personal* property, it being the identical property in litigation in this suit; and the final decree in said suit is, in form, against said Randolph. Said final decree recites as follows:

> "And it appearing to the Court that Evan Randolph and J. Cooke Longstreth, two of the respondents in said cause, have been personally served with the Subpœna in said cause and have failed to enter their appearance in said cause or to file any answer therein." (Rec., p. 163.)

Said decree is set out in this cause in the answer of the defendant, Chafee, and said answer makes the following averment in relation to said subpœna and said return thereon :

> "And this defendant avers that a subpœna was issued in said cause by order of said court, and was personally served upon the said Evan Randolph upon the 10th day of September, A. D. 1883, and was returned to said court, and that the said Evan Randolph neglected to enter his appearance in said cause or to file any plea or answer therein." (Rec., p. 162.)

That said Chafee, in his said answer, makes said original process, said returns, and said decree a part of his answer as follows : "And this defendant avers that all the said proceedings are now of record in this Honorable Court and are made part of this his answer, and he prays he may have the same benefit and advantage thereof as if he had pleaded the same in bar to the claim of said Evan Randolph to be the owner of said 4022 shares of said capital stock." (Rec., p. 164.)

That said final decree avers that *personal* service was made on Evan Randolph, which *if true*, and made within the State of Rhode Island, would have given that court jurisdiction of said Randolph; but the return above quoted shows that said service was made on said Randolph in the State of Pennsylvania; which said return taken in connection with the averments in the decree, that said Randolph neither appeared, nor filed any answer, shows conclusively that said court was without any jurisdiction whatever to pass said decree against said Randolph.

Counsel for appellants failed to discover the omis-

sion of said process and said returns thereon until within the past two weeks. As soon as the discovery was made application was made to the appellees to enter into a stipulation that said process and returns might be added to the present printed record, to which application counsel received no response until this 16th day of December, 1889, when a letter was received, signed by C. Frank Parkhurst, declining to consent to any stipulation in the matter.

Wherefore said appellants move the court, under rule 14, to award a writ of *certiorari* to be issued and directed to the judge of the Circuit Court of the United States for the District of Rhode Island, commanding them that, searching the record and proceedings in said cause they forthwith certify to this court those parts of said record so omitted as aforesaid.

O. D. BARRETT,
Of Counsel.

Washington, D. C., Dec. 16, 1885.

DISTRICT OF COLUMBIA. } *ss:*

I, O. D. Barrett, make oath that the matters and things above set forth in support of the above motion for a writ of *certiorari* are true, and that the papers quoted, as from the record of said *Pomroy* vs. *Sprague*, and others, are quoted from a duly certified copy of said record in my possession.

O. D. BARRETT.

Subscribed and sworn to before me this 17th day of September, 1889.

ALBERT HARPER,
[SEAL.] *Notary Public.*

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

JOHN S. JENKS, WILLIAM H. JENKS AND CHARLES RHOADES, EXECUTORS OF EVAN RANDOLPH, DECEASED, *Appellants*,

vs.

THE QUIDNICH COMPANY, GORHAM P. POMROY, ASSIGNEE, &c., CORNELIUS S. SWEETLAND, TRUSTEE AND ASSIGNEE OF THE A. AND W. SPRAGUE MANUFACTURING COMPANY *et al.*

No. 213.

Appellants' Motion for Writ of Certiorari for Diminution of Record.

Come, now, appellants, by O. D. Barrett, their counsel, and suggest diminution of the record, in this, to wit:

That copies of original documents forming a part of the record of this suit in the circuit court of the United States, for the District of Rhode Island, have been ommitted from the transcript of said record, heretofore certified to this court, as follows, to wit:

Copy of the subpœna to answer the original bill of complaint, issued on the 2d day of August, 1883;

and of the return, thereon, showing that said subpoena was duly served on the 3rd day of August, 1883, on all the defendants to said original bill of complaint;

Copy of the subpœna to answer the first supplemental bill of complaint, issued on the 31st day of August, 1883, and of the return, thereof, showing that said subpoena was duly served on all the defendants to said supplemental bill of complaint on the 31st day of August, 1883;

Copy of interlocutory decree overruling defendants' pleas entered on the first day of May, 1884;

Copy of a subpœna *duces tecum*, issued on the 8th day of February, 1884, requiring the clerk of the Supreme Court of Rhode Island to produce, in said Circuit Court, the original papers in the suits in Equity Nos. 1932, 2075 and 2161, in said State court, and copy of the return thereon, showing that said papers were produced in said Circuit Court on said 8th day of February, 1884;

A copy of the subpœna first above mentioned, with the return thereon, is important to show that service of process was made on all the defendants to the original bill of complaint prior to the 18th day of August, 1883, the date of the commencement of the proceedings in the State court for the appointment of Gorham P. Pomroy, as assignee in the place and stead of Mary and Fanny Sprague. (Rec., pp. 124–149.)

A copy of the subpœna, second above mentioned, with the return thereon, is important to show that all the defendants, one of whom was said Gorham P. Pomroy, to the first supplemental bill of complaint,

were served with process prior to the 3d day of September, 1883, on which day said Pomroy filed in the State court his bill of complaint, which, with the proceedings thereunder he subsequently pleaded in bar to this suit (R., pp. 32–36).

A copy of said decree, overruling defendant's pleas is important, as there is not a word in the transcript, heretofore certified to this Court, tending to show any action, taken by the court below, in relation to said pleas or to any of them.

A copy of said subpœna *duces tecum*, with the return thereon, is important to show that said Circuit Court had before it the record in the suit in Equity No. 2161, in the State court, wherein it appears that the only "*personal service*" made on Evan Randolph, in that suit, was made in Philadelphia, Pa., as shown in the petition heretofore filed in this Court, by appellants, for a writ of *certiorari* to bring up said record, to which petition reference is hereby made, and to the return of said writ, which is to the effect that the document, a copy of which was called for by said writ, was not found among the records of said Court.

Counsel for appellants failed to discover said omissions from the transcript of the record, heretofore certified to this court, until very recently, and as soon as they were discovered, application was made to the clerk of said circuit court for certified copies of said papers so omitted, but the same were not received here until the 25th day of January, 1890.

Wherefore appellants move the court, under Rule 14, to award a writ of *certiorari*, to be issued and directed to the judges of the Circuit Court of the

United States for the District of Rhode Island, commanding them that, searching the record and proceedings in said cause, they forthwith certify to this court those parts of said record so omitted, as aforesaid, from the transcript heretofore certified to this court, and also all other parts of said record omitted from said transcript.

O. D. BARRETT,
Of Counsel.

WASHINGTON, D. C., *Jan.* 27th, 1890.

DISTRICT OF COLUMBIA } *ss:*

I, O. D. Barrett, make oath that the matters and things above set forth, in support of the above motion, for a writ of *certiorari*, are true, and that I have in my possession copies of the aforesaid subpœnas and decree duly certified by the clerk of said circuit court.

O. D. BARRETT.

Subscribed and sworn to before me this 27th day of Jan., 1890.

ALBERT HARPER,
Notary Public.

[SEAL.]

Office Supreme Court U. S.
FILED.
JAN 20 1890
JAMES. H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 213.

JOHN S. JENCKS, WILLIAM H. JENCKS, AND CHARLES RHOADES, EXECUTORS OF EVAN RANDOLPH, DECEASED, APPELLANTS,

vs.

THE QUIDNICK COMPANY *et als.*

APPELLEES' MOTION FOR WRIT OF CERTIORARI FOR DIMINUTION OF RECORD.

Come now the appellees, by Augustus S. Miller, their counsel, and suggest diminution of the record in this cause in this, to wit:

That the transcript of the record, after setting forth on pages 28 to 44 certain pleas pleaded by said appellees, said Quidnick, said Gorham P. Pomroy, and said Zechariah Chafee, omits to set forth the fact that said cause was heard on the bill and said pleas on the eighth day of February, A. D. 1884, and that on the first day of May, A. D. 1884, a decree was entered overruling said pleas, and omits to set forth the said decree, which was as follows, to wit:

PROVIDENCE, *sc:*

Circuit Court of the United States, District of Rhode Island.

EVAN RANDOLPH
vs.
QUIDNICK COMPANY *et als.* } Equity. No. 2059.

This cause, coming on to be heard, was argued by counsel, and thereupon, on consideration thereof, it was ordered, adjudged, and decreed that the defendants' pleas be, and the same are hereby, overruled.

By the court:

HENRY PITMAN,
Clerk U. S. Circuit Court.

May 1st, 1884.

That said appellees supposed that said matters omitted as aforesaid had been set forth in said transcript of the record and did not discover the said omissions until after they received their printed copies of the transcript of the record and within a short time prior to the filing of this motion.

Wherefore the said appellees move the Court, under rule 14, to award a writ of *certiorari* to be issued and directed to the judges of the circuit court of the United States for the district of Rhode Island commanding them that, searching the record and proceedings in said cause, they forthwith certify to this Court those parts of said record so omitted as aforesaid.

AUGUSTUS S. MILLER,
Of Counsel for said Appellees.

January 28, 1890.

I, Augustus S. Miller, make oath that the matters and things set forth in support of the above motion for a writ of *certiorari* are true.

AUGUSTUS S. MILLER.

Sworn and subscribed to before me this 28th day of January, A. D. 1890.

[NOTARIAL SEAL.] JAMES D. MAHER,
Notary Public.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 491.

EVAN RANDOLPH, APPELLANT,

vs.

THE QUIDNICK COMPANY ET AL.

LAW OFFICES OF
BENJAMIN F. BUTLER, WASHBURN, AND WEBSTER,
No. 6 Ashburton Place, Rooms 1, 4, 5, and 6.
FRANK L. WASHBURN. PRENTISS WEBSTER.

BOSTON, *May* 1, 1888.

MY DEAR SIR:

In the case of Evan Randolph, appellant, *vs.* The Quidnick Company *et als.*, No. 802, October term, 1887, in the Supreme Court of the United States, the appellant has died. I have had brought to my attention a notice dated April 9, 1888, signed by you, published in some paper, saying that the death is suggested, and inviting the proper representatives of Randolph to appear.

Please enter my appearance for John S. Jenks, William H. Jenks, and Charles Rhoads, executors of the estate of the

late Evan Randolph, deceased, in obedience to that notice, and please inform me that such entry has been made.

I am, very truly yours,

BENJ. F. BUTLER.

JAMES H. MCKENNEY, Esq.,
Clerk Supreme Court United States,
Washington, D. C.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES,
WASHINGTON, *May* 3, 1888.

Hon. B. F. BUTLER,
Boston, Mass.

DEAR SIR: Yours of the 1st inst. received. It will be necessary for you to make a motion in open Court before you can obtain an order to make John S. Jenks, Wm. H. Jenks, and Chas. Rhoads, executors of Evan Randolph, deceased, parties appellant in case No. 802 in place of the deceased. This motion can be made in open Court at any time before the expiration of the first ten days of the next term, and after the order to make the new parties is obtained you can then enter your appearance for the executors.

Yours truly,

JAMES H. MCKENNEY,
Per H. C. M.

Office Supreme Court U. S.
FILED.
NOV 21 1888
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 491.

EVAN RANDOLPH, APPELLANT,

vs.

THE QUIDNICK COMPANY ET AL.

Appeal from the Circuit Court of the United States for the District of Rhode Island.

And now come the respondents, appellees, in the above-entitled cause, and show unto this Honorable Court that the proper representatives of the said Evan Randolph, deceased, have not become parties to the above-entitled cause under and in pursuance of the terms of the order of the Honorable Court, dated the 9th day of April, A. D. 1888.

That the terms of said order have been duly complied with by the respondents, by causing a copy of said order to be printed according to the terms of said order.

Wherefore the said respondents pray that your honors will cause to be entered a decree dismissing the said appeal, and affirming the decree of the United States circuit court for the district of Rhode Island, with costs for said respondents, and that the mandate of this Court may issue forthwith for that purpose.

By their solicitor,

C. FRANK PARKHURST.

[Endorsement:] Sup. Court U. S. 1888, Oct'r term. No. 491. Evan Randolph, app'l't, *vs.* The Quidneck Co. *et al.* Motion by appellees to dismiss under Rule 15.

[Stamped:] Office Supreme Court U. S. Filed Nov. 15, 1888. James H. McKenney, clerk.

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1888.

EVAN RANDOLPH, Appellant,
vs.
THE QUIDNICK COMPANY *et als.* } No. 491.

Appeal from the Circuit Court of the United States for the District of Rhode Island.

ON MOTION BY APPELLEES TO DISMISS.

Suggestions on Behalf of Appellees.

This is a motion to dismiss the above appeal.

The motion is made for non-compliance by the representatives of the deceased complainant with the order, dated April 9, 1888, granted on motion of the appellees under Rule 15, sec. 1, entitling appellees to have the appeal dismissed unless the proper representatives of the deceased appellant, Randolph, should voluntarily become parties within the first ten days of this current October term.

Appellees have complied with the requirements of the order as to advertisement, as appears by the affidavit of publication, which is on file and herewith printed.

The proper representatives of Evan Randolph, deceased, have not "voluntarily become parties."

The time within which the proper representatives might have become parties elapsed on the 18th day of October, 1888.

A letter from Benjamin F. Butler appears on file, dated

May 1, 1888, requesting the clerk to enter his appearance for certain persons named therein, who are not now and never have been parties to the suit.

Appellees claim—

That the above letter of General Butler is in no sense a compliance with the order of April 9, 1888—

1. Because no persons have been admitted by the Court and become parties in place of deceased complainant, and therefore no appearance can be entered for parties who do not exist.

2. Proper representatives of deceased complainant can only become parties upon motion duly made in open court, heard and granted by the court upon the production of evidence to the satisfaction of the court that the persons claiming to become parties are the "proper representatives" of the deceased party, duly appointed, qualified, and existing at the time of the motion so to become parties, by virtue of the action of a court of competent jurisdiction of the matter of such appointment and qualification. In this case there is no motion to make the persons named by General Butler parties complainant; no evidence that they are now or ever have been the "proper representatives" of Evan Randolph, deceased; no evidence that they are even alive at this time to perform their duties as representatives, even if they ever were qualified according to law.

3. The practice under Rule 15, sec. 1 (the rule here invoked), is a substitute for the old chancery practice of bills of revivor; upon bill of revivor it would be necessary to make a substantive allegation that the parties seeking to revive are proper parties duly appointed, qualified, and existing in any representative capacity claimed by them, and these facts must be proved to the satisfaction of the court.

It is not to be supposed that this Court because it has established by its rules a simpler form of procedure thereby intends to dispense with all proof of representative capacity, and will admit to the responsible and important position of parties complainant in a great equity suit, involving very large and valuable interests, any persons whose names may be in the most informal way suggested, without evidence either of their right or desire to become such parties.

It is respectfully urged that the right of the appellees to have this appeal dismissed has now become fixed and determined under the terms of said order of April 9, 1888, and that the motion of the appellees should be granted.

Respectfully submitted,

C. FRANK PARKHURST,
Solicitor for Appellees.

SUPREME COURT OF THE UNITED STATES.

October Term, 1887.

EVAN RANDOLPH, Appellant,
vs.
QUIDNICK COMPANY *et als.* } No. 802.

Appeal from the Circuit Court of the United States for the District of Rhode Island.

Affidavit as to publication of order of notice of April 9, 1888.

I, Henry R. Davis, of Providence, in the county of Providence, and State of Rhode Island, being of lawful age, and being first duly sworn, on oath, depose and say that I am the secretary and cashier of the Providence Journal Company, a corporation chartered under the laws of Rhode Island, and located and doing business in the city of Providence in said State; that said corporation is the owner and publisher of the newspaper hereinafter mentioned, and has been such owner and publisher from on and before the ninth day of April, A. D. 1888; that C. Frank Parkhurst, solicitor

for the respondents in the above-entitled cause, ordered and caused to be published and printed a copy of the order in said cause (a printed copy of which said order is herewith incorporated) in the Manufacturers' and Farmers' Journal, for three successive weeks, in accordance with the terms of said order, and that the same was duly printed in said Manufacturers' and Farmers' Journal in every issue thereof for three successive weeks, on the 30th day of April, 1888, and on the 3d, 7th, 10th, 14th, and 17th days of May, A. D. 1888; that said Manufacturers' and Farmers' Journal is a newspaper of general circulation within the State of Rhode Island.

HENRY R. DAVIS.

Subscribed and sworn to in the city of Providence, this 7th day of June, A. D. 1888, as witness my hand and official seal.

[SEAL.] C. FRANK PARKHURST,
Notary Public.

SUPREME COURT OF THE UNITED STATES.

October Term, 1887.

EVAN RANDOLPH, Appellant,
vs.
THE QUIDNICK COMPANY *et al.* } No. 802.

Appeal from the Circuit Court of the United States for the District of Rhode Island.

Mr. M. F. Morris, in behalf of counsel for the appellees, suggested the death of Evan Randolph, the appellant in this cause, and moved the Court for an order, under the 15th rule, to make the proper representatives parties; whereupon it is now here ordered by the Court that, unless the proper representatives of the said Evan Randolph, deceased, as aforesaid, shall voluntarily become parties within the first ten days of the ensuing term of this Court, the appellees shall be entitled to have this appeal dismissed: Provided, however, that a copy of this order shall be printed in some newspaper of general circulation, within the State of Rhode

Island, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

April 9th, 1888.

True copy.

[L. S.] Test: JAMES H. MCKENNEY,
Clerk Supreme Court U. S.

a30 MT6tp5*

[Endorsed:] Sup. Court U. S. 1888, Oct. Term. No. 491. Evan Randolph, App't, *vs.* The Quidnick Co. *et al.* Proof of publication of order.

[Stamped:] Office Supreme Court U. S. Filed Jun. 9, 1888. James H. McKenney, clerk.

Supreme Court of the United States.

OCTOBER TERM, 1888.

EVAN RANDOLPH, *appellant*,
vs.
QUIDNICK CO., *appellee*.
No. 491.

And now comes Benjamin F. Butler, of counsel and solicitor of appellant, and moves the court for a decree vacating the order dismissing the appeal in the above entitled cause past on the 19th day of November, 1888.

And for cause says:

1. That the appellants, to wit: John S. Jencks, William H. Jencks and Charles Rhoades, executors of the estate of the late Evan Randolph, were, by the order of this court, dated April 19, 1888, directed to enter their appearance in this cause: and in obedience thereto said Butler left with the clerk of this court, about the first day of May last past, a request to enter his appearance for said executors, giving their names and office of trust.

It now appears that the clerk failed to recognize the fact that said executors were acting in obedience to an order of court, and not making a voluntary ap-

plication to become parties to said suit, and wrote said Butler the letter dated May 3rd, 1888, printed and filed in this cause, which was never seen or heard of by said Butler until this 3d day of December, 1888.

2. No notice of the motion for an order dismissing said appeal was ever served on said Butler nor had he any knowledge of the tendency of any such motion until after said order of dismissal had been made.

Respectfully submitted,

BENJ. F. BUTLER,
of Counsel for Appellant.

BRIEF FOR THE RESPONDENT SWEETLAND, TRUSTEE, &c.

SUPREME COURT OF THE UNITED STATES.

No. 213. OCTOBER TERM, 1889.

JOHN S. JENCKS, WILLIAM H. JENCKS AND CHARLES RHOADES, EXECUTORS OF EVAN RANDOLPH, DECEASED, APPELLANTS.

vs.

THE QUIDNICK COMPANY; GORHAM P. POMROY, ASSIGNEE, &C.; ZECHARIAH CHAFEE, TRUSTEE AND ASSIGNEE OF THE A. & W. SPRAGUE MANUFACTURING COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

WILLIAM G ROELKER,

Of Counsel for the Respondent Sweetland, Trustee, etc.

SUPREME COURT OF THE UNITED STATES.

No. 213. October Term, 1889.

JOHN S. JENCKS, WILLIAM H. JENCKS AND CHARLES RHOADES, EXECUTORS OF EVAN RANDOLPH, DECEASED, APPELLANTS.

vs.

THE QUIDNICK COMPANY; GORHAM P. POMROY, ASSIGNEE, &C.; ZECHARIAH CHAFEE, TRUSTEE AND ASSIGNEE OF THE A. & W. SPRAGUE MANUFACTURING COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

CORRECTIONS OF ABSTRACT AND BRIEF FOR THE APPELLEE CORNELIUS S. SWEETLAND, TRUSTEE AND ASSIGNEE, IN PLACE OF ZECHARIAH CHAFEE, TRUSTEE AND ASSIGNEE, DECEASED.

CORRECTIONS OF ABSTRACT.

This respondent begs leave to refer to and adopt the corrections of abstract filed by the other respondents.

POINTS OF LAW AND FACT.

This respondent begs leave to refer to the brief filed on behalf of the other respondents herein, in so far as it upholds the decree of the court below, and in addition thereto he respectfully submits the following suggestions:

I. The Parties.

The complainants are executors of Evan Randolph, who was a creditor of Hoyt, Spragues & Co., of New York, in the sum of $34,000. William and Amasa Sprague were his debtors in that they were members of that firm.

This respondent Sweetland, in his capacity as trustee, successor to Chafee, deceased, represents the great body of the creditors of the A. & W. Sprague Manufacturing Co., and of all the Spragues, viz.: 449 creditors, holding $8,717,450, being all the direct debt, except $114,000.

II. What the Complainant seeks.

The complainant, having claimed to purchase for the sum of $100, at his own execution sale, and for the sum of $175 at the execution sale of Waterman, all the Sprague stock in the Quidnick Company, he now seeks to obtain possession of substantially all the property of the Quidnick Company in this suit. The proceeds of the sales of that property, amounting to nearly $500,000, have been divided out by Mr. Chafee among the body of creditors, now represented by this respondent.

III. The debtors, the Spragues, are Colluding with the Complainant, and assisting him in his suit.

It appears from the records of the various suits, incorporated into the record in this case, that the Spragues have, for several years, in various ways opposed the assignee Mr. Chafee, and the body of the creditors represented by him.

The same learned counsel who appeared for the Spragues in those matters, now appear in this cause for the complainant.

Rec. p. 333.

Amasa Sprague appears as a witness for the complainant.

Rec. p. 175.

The two old ladies, Mary and Fanny Sprague, to whom this Quidnick stock had been transferred by the various owners thereof in trust for all their creditors, undertook, without any consideration, and in breach of their trust, to transfer this stock upon the books of the company to the complainant, and he claims to have a certificate thereof to-day.

Rec. p. 24.

IV. The transfers of the Quidnick stock to Mary and Fanny Sprague in trust for all the Sprague creditors were valid.

These transfers were not contemplated by the trust mortgage deed to Chafee. The scheme of that instrument called for a pledge of the stock to Chafee as collateral security for the payment of the Trust mortgage notes. It appears that the transfer by way of pledge was made to Chafee the next day after the deed was executed, but the transfers to Mary and Fanny Sprague were not made until nearly a month later, on Jan. 1, 1874.

They should be considered as independent transactions.

Taken as such they are partial assignments for the benefit of all their creditors.

Partial assignments are valid in Rhode Island.

Spencer & Pierce vs. *Jackson*, 2 R. I. 35.

Per Haile, J: "This deed does not purport to convey all the debtor's property but only certain property specifically set forth. Whether it does in fact convey the whole it is not necessary to decide. There is nothing on the face of the deed calculated to deceive or defraud creditors.

The assignment is in our opinion valid on its face."

See Burrill assignments § 155 et seq.

But if these transfers are to be considered in connection with the trust mortgage as creating preferences, they are still valid, in Rhode Island.

Spencer & Pierce vs. *Jackson*, 2 R. I. 35.
Dockray vs. *Dockray*, 2 R. I. 547.
Sadlier vs. *Fallon*, 4 R. I. 490.
Nightingale vs. *Harris*, 6 R. I. 321.
Heydock vs. *Stanhope*, 1 Curt. 471.
Stewart vs. *Spencer*, 1 Curt. 157.

There is no evidence that there was any actual fraudulent intent about these transfers. Amasa Sprague says (Rec. p. 181, 182,) that they were made "to keep it out of reach of creditors." This is entirely consistent with the legal and honest effect of the transfer, viz: to keep it *out* of reach of any one creditor for the equal benefit of all.

V. The transfer of this stock from Mary and Fanny Sprague to the complainant was void in equity.

The transfer was made without consideration, and in breach of trust. The complainant claimed the stock on the ground that the transfer to Mary and Fanny Sprague was void. For them to assent to that claim and make the transfer is a transparent fraud.

The complainant, whatever he might be able to do at law, cannot in equity ground any claim to relief upon a title thus acquired.

If the last two points are well taken, there is an end of complainant's case.

VI. The Trust Mortgage Deed to Chafee is valid, under the law of Rhode Island and elsewhere. This Honorable Court should follow the Local Law.

1. It is valid under the Rhode Island law.

The Rhode Island Statute of Frauds is as follows:

"SECTION 1. Every gift, grant or conveyance of lands, tenements, hereditaments, goods or chattels, or of any rent, interest or profit out of the same by writing or otherwise, and every note, bill, bond, contract, suit, judgment or execution, had or made or contrived of fraud, covin, collusion or guile, to the intent or purpose to delay, hinder or

defraud creditors of their just and lawful actions, debts, suits, accounts, damages or just demands of what nature soever, or to deceive or defraud those who shall purchase bona fide the same lands, tenements, hereditaments, goods or chattels, or any rent, interest or profit out of them, shall be henceforth deemed and taken as against such person or persons, his, her or their heirs, successors, executors, administrators or assigns, and every of them, whose debts, suits, demands, estates, rights or interests by such guileful and covinous devices and practices as aforesaid shall or may be in any wise injured, disturbed, hindered, delayed or defrauded, to be clearly and utterly void, any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding."

Gen. Stat. R. I., 1872.
Pub. Stat. R. I., 1882, cap. 173, § 1.

Under this statute the Rhode Island courts have always held that the *fraudulent intent* of the grantors was the point of the inquiry, in determining whether the conveyance was fraudulent or not.

This fraudulent intent may appear either by (1) proof of actual fraudulent intent, or (2) fraud in law apparent on the face of the deed from the provisions contained in it.

Provisions of a deed which are fraudulent in law are, however, in Rhode Island, divided into two classes, viz.:

(*a*) Provisions absolutely fraudulent, which no evidence can explain away, provisions which raise an irrebuttable presumption of fraudulent intent, e. g. a provision for an insolvent assignor or his family out of the assigned estate.

(*b*) Provisions prima facie fraudulent in law, which may be explained by parol evidence dehors the deed, and shown to be, under all the circumstances of the case, consistent with an honest intent, and, therefore, unobjectionable under the statute.

Parol evidence has always been admitted, in Rhode Island, to explain away apparently fraudulent provisions in a deed.

Per Ames, C. J., in *Nightingale* v. *Harris & Lippitt*, 6 R. I., 321, 329:

"Without doubt an assignment for the benefit of creditors may contain a clause so plainly indicative of the fraudulent intent pointed out by the statute as to carry its death wound on its face; such as a gratuitous provision out of the assigned property for the insolvent assignor or his family. Except, however, in such glaring cases, incapable of any just or honest explanation, we should be departing from the usage of well instructed courts of any sort, and especially courts of equity, if we should attempt to pronounce upon the intent of the maker of any instrument without the aid of all those facts relating to the subjects and objects of his conveyance, which by placing us in the precise point of view from which he contemplated his act, will enable us to ascertain what he intended by the language he used, and, consistently with that language, why he intended it."

Gardner vs. *Commercial Nat. Bank*, 13 R. I., 155, and report of subsequent proceedings in said case in *Austin* vs. *Sprague Mfg Co.*, 14 R. I., at pp. 477, 478.

See also *Austin* v. *Sprague Mfg. Co.*, 14 R. I. 464.

Acting under these rules, the Supreme Court of Rhode Island have declared that this trust deed of mortgage to Chafee is valid under the Rhode Island law.

Austin vs. *Sprague Mfg. Co.*, *ubi supra.*

In coming to this conclusion the Supreme Court of Rhode Island made two findings, viz:

1st. That the assignors had no actual fraudulent intent in making the deed of trust.

2d. That the deed read in the light of the circumstances surrounding its execution, contained no provisions which would render it fraudulent in law in Rhode Island.

The first of these findings was one of fact.

It is submitted that this Hon. Court should come to the same conclusion upon all the evidence in the case.

The Circuit Court must have come to this conclusion in order to have rendered the judgment which it did in this case.

See the opinion of Judge Colt.

This inference is rendered irresistable by the fact that Judge Colt in the prior case of *Moulton* vs. *Chafee*, 22 Fed. Rep. 26, reviewed the same evidence which is part of the record in this cause, and expressly found that this same trust deed was executed in good faith towards creditors by the parties to it.

The Supreme Court of Maine came to the same conclusion in *4th National Bank* vs. *Chafee*, 71 Maine, 514.

Per Walton, J.: "It is also urged that the assignment was made for the purpose of defrauding creditors. It is a sufficient answer to this argument, to say that in our judgment the evidence does not support it. The assignment appears to have been made openly, upon consultation with creditors, and upon their recommendation; and we think it may be doubted whether a better arrangement could now be made if the work should be gone over with again. If the trustee does not perform his duty faithfully, the remedy is to have him removed and a better man put in his place."

It appears that the A. & W. Sprague Manufacturing Co., in October, 1873, applied to the Providence banks for aid; that the banks appointed a committee of investigation. The application was for a loan of $1,000,000; that the committee of the banks was not satisfied that the proposed loan would be free from objections under the provisions of the Bankrupt Act, and that the committee reported that the then unsettled condition of financial affairs, and the large amount of obligations maturing, precluded the possibility of reporting that $1,000,000 would be sufficient, and recommended a plan substantially the same as finally adopted in the deed of Nov. 1, A. D. 1873. The report of the committee deserves to be quoted:

"Upon coming to this conclusion, your committee were requested by the company to express their recommendation of the best course to be taken under the circumstances, *to enable the company to secure to its creditors the payment of their claims, and to preserve, as far as possible*, from *shrinkage the vast available property in the hands of the company.*

"They therefore recommend that the A. & W. Sprague Manufacturing Company, and the individuals comprising that corporation, mortgage all their property to *three trustees, who shall practically have all control and management of the entire property.*

"These trustees to issue notes to an amount which shall fully cover the amount of present indebtedness, these obligations having three years to run, and drawing semi-annual interest at the rate of seven and three-tenths per cent. per annum, with the right reserved to pay five per cent. of the debt as often as in their judgment shall be practicable.

"It is believed that all the creditors will accept these evidences of indebtedness, and if the trustees have the full authority asked for them, *they will be able to avert a great calamity to thousands of operatives, make the mill properties valuable, prevent an immense further shrinkage of values, and pay in full the indebtedness of the A. & W. Sprague Manufacturing Company*, together with that of all its depending establishments."

This committee represented the creditors. Rec. p. 455.

Any one who examines even generally, the miscellaneous and complicated character of the assets found by the committee, shown on pp. 449–55 of the Rec., must concede the practical wisdom of the arrangement which was made.

Next we have the deposition of an old merchant, Mr. King (p. 459 et seq. Rec.,) creditor for $232,000, for cotton sold (ans. 3), who was present at a public meeting of creditors Nov. 6, at a large hall, with the room full, of which public notice had been given (ans. 4 and 5). This was six days after the date of the report of the committee of the banks. At this time a "trust deed," as he styles it, had already been drawn (ans. 6); and this explains why this instrument, which was under scrutiny a whole month by the creditors and their counsel, as we shall show, though executed December 1st, was dated November 1st.

At that meeting a committee was appointed to "*examine a trust deed, submit the same to counsel and nominate trustees*" (ans. 6), consisting of Mr. King (ans. 9), Mr. Riker of New York, creditor for $60,000 for drugs (ans. 11), Mr. Hopkins, creditor for a very large amount of coal (ans. 12), Mr. Remington, a cotton dealer, "creditor for a large amount" (ans. 13), and Mr. Howard, then governor of the State, manufacturer of cotton goods, personally acquainted with much of the property, and director and stockholder in creditor institutions, as he testifies.

This committee employed as counsel Hon. B. F. Thomas and Mr. Smith, of Martin and Smith; and also Mr. Payne, and perhaps Mr.

Greene (ans. 17 to 21), who passed several days examining the proposed mortgage, "*very critically, sentence by sentence and word by word*," and made "*such alterations as they thought necessary.*" (ans. 22.)

The corporation counsel and the committee were present at these meetings "most of the time" (ans. 23 and 24), at which a form of trust deed was fully agreed upon, *fully satisfactory to the committee and their counsel* (ans. 25 and 26). Mr. King annexed to his deposition a form which, according to his recollection, was the one agreed upon (ans. 42–5). The form corresponds in all particulars, except the name and number of trustees, with the executed mortgage.

Nov. 29, A. D. 1873, after this creditors' committee had been in consultation twenty-three days, Mr. King received the following letter, appearing on Rec. p. 465.

WM. J. KING, Esq., *Chairman, etc.*

We have given to the proposed deed of trust of the Spragues property, to be executed by us as trustees, the most careful consideration, with an earnest desire to see our way clear to accept the same, but, acting under the advice of counsel, *we must decline to do so unless creditors*, by some previous action on *their* part, *will protect us against personal liability.*

Very respectfully,

RUFUS WATERMAN,
A. D. LOCKWOOD,
GEO. C. NIGHTINGALE.

PROVIDENCE, Nov. 29, 1873.

As the draft of the deed provided that no trustee should be liable except for *his own default*, and as the trustees would have had behind them this vast property for their protection, it is evident that this letter contemplated nothing else than the individual action of each creditor, the delay for procuring which would have defeated the whole project. Upon receipt of this letter *the attorneys for the corporations did exactly what should have been done by attorneys* under these circumstances, after so much delay, with so much property lying open to litigation, fearing every moment attachments, "*as many claims were due,*" and the committee "*being in great trouble to know what to do*" (ans. 34.)

They were under great responsibility, threatened with immediate disaster, and were required to act with promptness; and without evidence of bad faith, of which there is none, their decision must be accepted as made in good faith for the purpose of averting disaster. It was so made, and on the instant, and met the approval of the committee and the subsequent ratification of the creditors. Their appointment was a wise one. Mr. King testified (ans. 38) that he knew of no man in Rhode Island or elsewhere as suitable for the trust. It appears that he had no connection with the Spragues, had not been consulted about, nor interfered with the questions arising from this failure, and that the matter of trusteeship was first mentioned to him within five hours before he accepted it. *This proves that his appointment was the result of no connivance, nor premeditation; but was the result of an emergency requiring prompt action.* The committee immediately approved his appointment in the following card, published in the newspapers, Rec. p. 441:

"The undersigned, members of the committee appointed by the creditors of the A. & W. Sprague Manufacturing Company, deem it their duty to say: That, although the substitution of Mr. Zechariah Chafee for the gentlemen named in the deed of trust was without their knowledge, in view of the unwillingness of those gentlemen to accept said trust without important guaranties on the part of the creditors, they consider the selection and acceptance of Mr. Chafee as entirely proper and expedient.

From a long personal acquaintance with Mr. Chafee, they are enabled to testify to his eminent fitness for the position, and fully believing that the interests of the creditors will be best subserved by a general coöperation with the trustee, they earnestly urge all the parties in interest to assist in the faithful execution of the trust. Mr. Ricker, the other member of the committee, being in New York, has not been consulted in regard to this expression.

(Signed) WM. J. KING,
WM H. HOPKINS,
HENRY HOWARD,
DANIEL REMINGTON."

Creditors to the amount already stated, received the mortgage notes all countersigned by Mr. Chafee,—thus ratifying his appointment to a demonstration.

It is absurd to imagine that the attorneys of the corporation intended to appoint an incapable or dishonest trustee; as such trustee would speedily have been enjoined or removed within its jurisdiction by any equity court where property was found, and also in Rhode Island, after the deed of April 6, A. D. 1874, by summary process on petition of a majority in amount of creditors.

General Statutes of Rhode Island, Chap. 181, Sec. 13.

The evidence is overwhelming that the Trust Mortgage Deed was the result of the fullest consultation between the debtors and creditors. That it was universally believed to be the best possible course for all concerned to pursue, and that it was adopted by the debtors in good faith at the recommendation of the creditors committee.

The overwhelming mass of the creditors (all but $114,000 out of nearly $9,000,000) signified their assent by accepting its provisions.

If this Hon. Court find that there was no actual bad faith, and the Rhode Island Court having held that the deed in the light of the surrounding circumstances attending its execution, contains no provisions fraudulent under the Rhode Island law, it is submitted

2. That this Honorable Court should follow the Rhode Island decision.

(*a*) Because the Rhode Island decision in *Austin* vs. *Sprague Mfg. Co., ubi supra*, is an interpretation by the highest tribunal of the State, of the State Statute of frauds.

Pub. Stat. R. I., cap. 173, § 1.

That statute provides that conveyances made with intent to defraud, etc., creditors shall be void.

The Supreme Court of Rhode Island say that this deed does not contain any provisions which prove *as a matter of law* an intent to defraud creditors within the meaning of the State statute, and under the common law of the State.

In *Bucher* vs. *Cheshire Railroad Co.*, 125 U. S., 583, this court say: "There is no common law of the United States, and yet the main body of the rights of the people of this country rest upon and are governed by principles derived from the common law of England, and established as the laws of the different States. Each State of the Union may have its local usages, customs and common law. *Wheaton* vs. *Peters*, 8 Pet., 591; *Pennsylvania* vs. *Wheeling Bridge Co.*, 13 How., 519."

In *Leffingwell* vs. *Warren*, 2 Black, 599, this court said: The construction given to the statute of a state by the highest tribunal of the state is regarded as a part of the statute, and is as binding upon the courts of the United States as the text. (Statute of Limitations.)

The framing of insolvent systems by local law and regulation is, in the absence of a National Bankrupt law a proper subject of state legislation. It is notorious that many provisions which are permitted by the insolvent systems of some states are prohibited and branded as fraudulent in others.

It is submitted that it would be entirely competent for the legislature of Rhode Island by express enactment to authorize debtors to execute in *actual good faith* deeds of assignment or trust mortgage deeds containing the precise provisions contained in this deed.

Indeed it may well be urged that a sound public policy requires just such enactments in a densely populated manufacturing community where the daily bread of thousands of operatives depends upon the uninterrupted operation of the gigantic factories in which they are employed. In the Sprague establishments there were employed, as appears by the Record, some ten thousand persons, who together with the persons directly dependent upon them for support represented a large portion of the entire population of the State.

Common experience has proved conclusively in such cases that the interest of debtor and creditor alike demands that the manufacturing establishments should be kept in operation at all hazards, as the shrinkage and loss from stoppage is simply enormous. It means not only a waste and deterioration in machinery and prop-

erty, but a loss of an expensive organization of labor through the scattering of the help, and a loss of the place which the manufactured product holds in the markets of the world.

If, then, such provisions in a deed might be authorized by express State enactment, why is it not competent for the State Courts to declare that under the Common and Statute law of the State such provisions in a deed are legal and valid, and are not fraudulent *in law?*

It is submitted that such declaration when made by the State Courts does not affect a question of general jurisprudence or of commercial law, where this Hon. Court will disregard the State decisions, as stated in

Burgess vs. *Seligman*, 107 U. S. 20, and cases cited in note.
Bucher vs. *Cheshire R. R. Co.*, 125 U. S. 583.

(*b*) Because the Rhode Island decision constitutes a rule of property "by which is meant those rules governing the descent transfer or sale of property and the rules which affect the title and possession thereto which are to be treated as laws of that State by the Federal Courts."

Per Mr. Justice Miller in

Bucher vs. *Cheshire R. R. Co.*, 125 U. S. at p. 583.

The transfer in question is of the stock of the Quidnick Co., a Rhode Island corporation, owned and transferred by citizens of Rhode Island domiciled therein to another citizen of Rhode Island domiciled therein.

VII. It is in proof, and undisputed that it will require more than the entire proceeds of the Quidnick Co's stock under the pledge thereof to the trustee, to pay the trust mortgage notes in full.

Rec., p. 534.

If, therefore, the court find that the trust mortgage deed and the pledge of the Quidnick Co's stock thereunder are valid, then the entire equitable interest in the stock is in this respondent as

trustee for the creditors, and it is submitted that the complainant ought not to have a decree, even though this Honorable Court should be of the opinion that the transfer of the legal title to the stock to Mary and Fanny Sprague subject to the pledge was void.

Because all that the complainant could take would be a dry legal title which could be of no benefit to him, and would simply serve to unsettle the titles and possession of all concerned, to no useful purpose.

VIII. In any event no relief should be granted upon this Bill against this Respondent Sweetland individually or against the Trust Estate remaining in his hands as successor to Chafee the deceased Trustee, further than to declare that the Complainant's testator acquired title to the stock as against Chafee, and consequently against his successor.

The original bill of complaint as amended, simply prays that the transfers of the stock to Chafee and to Mary and Fanny Sprague be declared to be void as against the Complainant and that the Complainant's title thereto be confirmed and that transfer thereof may be ordered to be made to him.

Record page 8.

The first supplemental bill filed August '83, alleges that Pomroy has been appointed assignee by the State Court in place of Mary and Fanny Sprague; also that he the Complainant has secured a transfer of the stock into his name upon the books of the Company.

He prays as before that his title may be quieted and confirmed as against all parties including Pomroy assignee, and for injunctions.

Record pages 26, 27.

The second supplemental bill filed in May, 1884, alleges that since the filing of the first supplemental bill certain of the Respondents have conspired together to act as the true stockholders of the Quidnick Co., and to sell its property to the Union Co. at in-

adequate prices; that they have held meetings as such stockholders, appointed officers, secured possession of its property, and sold the same at prices far below its true value to the Respondents the Union Company, and B B. & R. Knight, who claim possession thereof, all in fraud of his rights. He also sets forth the proceedings in the State Court.

He makes the officers Harris and Gould, and the purchasers Union Co. and B. B. & R. Knight, parties Respondent.

He prays in addition to the original prayers that all the proceedings in the State Court, and the acts of the several Respondents in holding meetings, electing officers, and selling the property of the Quidnick Co. be declared to be void, and that the purchasers be required to surrender up the property sold to the Quidnick Co., and to account for any property destroyed; and that a Receiver be appointed of the funds realized from said sales; and for injunctions.

Record pp. 53, 54.

It appear from the answers and testimony of the Respondents Chafee and Pomroy that the proceeds of the sales of the property had under the decree of the State Court actually been paid over to Chafee as pledgee of the stock, and by him paid out to the creditors before the filing of the Complainant's second supplemental bill and the service of process thereon.

Record p. 70, 92, 222.

Mr. Chafee died March 30, 1889, and this Respondent having been appointed as his successor by the Supreme Court of Rhode Island became a party to this cause during this Term of this Hon. Court, too late to appear as a party in the printed record.

1. Mr. Sweetland is not *personally* liable for the acts of his predecessor Mr. Chafee the deceased Trustee, in receiving and disbursing the proceeds of sales of property of the Quidnick Co. as above set forth. If Mr. Chafee's acts were tortious and rendered personally liable, the remedy if any, must be against Mr. Chafee's personal representatives.

2. The trust estate remaining in the hands of this Respondent cannot be holden to make good to the Complainant or the Quidnick Co., the proceeds of the sales of property received by him and disbursed to the creditors by him.

(*a*) Because the Bill of Complaint is not properly framed for that purpose. There is no prayer against Chafee except that Complainant's title to the stock be established against him.

(*b*) Because the complainant in and by his second supplemental bill has elected to pursue the property of the Quidnick Company itself, and not the proceeds of the sale of that property, in that he seeks to have those sales declared void, and the purchasers required to reconvey and surrender up the property to the company, and for injunctions.

It is evident that the complainant, or the Quidnick Co. cannot have both the property and the proceeds of the sale thereof too.

Neither can he follow the misapplied trust funds and hold the trustee to answer for them as a debtor too. "The *cestui que* trust, says Judge Story, (2 Eq. Jur., § 1262) has an option to insist upon taking the property, or he may disclaim any title thereto and proceed upon any other remedies to which he may be entitled either in *rem* or in *personam*. He cannot insist upon opposite and repugnant rights." See *Hodges* vs. *Bullock*, 15 R. I., p. 595.

The case made by the second supplemental bill is that of an alleged conspiracy on the part of a number of the respondents, citizens of Rhode Island, whereby they have obtained control of the corporation in which the complainant claims to own nearly all the stock, and have fraudulently alienated or are about to alienate all its property. It seeks a reconveyance of any property so alienated, and an injunction against further alienation.

It is nowhere alleged or proved that Mr. Chafee was party to this alleged conspiracy.

The case made by the complainant's bill is one where the e-*facto* agents of the corporation are alleged to have been guilty ers in-wrong against the corporation.

In such case a Court of Equity will interfere at the suit of a share holder without proof of a demand upon the managing agents and their wrongful refusal or neglect to proceed in the name of the company; such request would not only be nugatory, but it would be wrong to commit to the wrongdoers themselves the conduct of the litigation on behalf of the complainant against themselves.

Peabody vs. *Flint*, 6 Allen, 52.
Brewer vs. *Boston Theatre Co.*, 104 Mass., 378, 387.
Mussina vs. *Goldthwaite*, 34 Tex., 125.
Pond vs. *Vermont Valley R. R. Co.*, 12 Blatch, 280.
Hardon vs. *Newton*, 14 Blatch, 376.
Hazard vs. *Durant*, 11 R. I, 195.
Salomons vs. *Laing*, 12 Beav., 377.
Heath vs. *Erie R. R. Co.*, 8 Blatch, 410.
Robinson vs. *Smith*, 3, Paige 222.
Currier vs. *N. Y. Ele. R. R. Co.*, 35 Hun., 355.
Rogers vs. *Lafayette Ag. Works*, 52 Ind., 296.
Deaderick vs. *Wilson*, 8 Baxter, (Tenn.) 108.
Moore vs. *Schoppert*, 22 W. Va., 282, 290.

And whenever a corporation would be entitled to an injunction to protect itself and is not able to apply for the remedy, a share holder may obtain the relief to protect himself.

Bloxam vs. *Met. Ry. Co.*, L. R. 3 Ch. 337.
Dodge vs. *Woolsey*, 18 How., 331.
Leo vs. *Un. Pac. R. Co.*, 17 F. R., 273.
Lyde vs. *Eastern Bengal Ry. Co.*, 36 Beav., 10.
Pickering vs. *Stephenson*, L. R. 14 Eq., 322.

But a court of equity will fully dispose of a case properly before it, and will do complete and final justice between all the parties.

Gregory vs. *Patchett*, 33 Beav., 607.
Salomons vs. *Laing*, 12 Beav., 377.

Per Sir George Jessel, M. R., in *Russell* vs. *Wakefield Water Works Co.*, L. R. 20 Eq., 474, 481:

"When you have got the second corporation or person a party the suit, it may happen that, in addition to the relief that you entitled to as regards the first, you are entitled to have relief

against the second for something that has been done under the *ultra vires* agreement. You may be entitled to have money paid back which has been paid under the *ultra vires* agreement as in the case of *Salomons* vs. *Laing*, (12 Beav. 377,) and you may be entitled to have property returned, or other acts done.

If the detainer or holder of the money or property, that is, the second corporation or other person, is already a party, and a necessary party, to the suit, it would be indeed a lame and halting conclusion if the court were to say it could not do justice in a suit so framed by ordering the money to be returned or the property restored. It is a necessary incident to the first part of the relief which can be obtained by individual corporators, and will do complete justice on each side, and that has always been the practice of the court. Therefore in a case so framed, there is no objection to a suit by an individual corporator to recover from another corporation or from any other persons being strangers to this corporation, the money or property so improperly obtained. But that is not the only case. Any other case in which the claims of justice require it is within the exception."

(*c*). Because the remedy for the recovery of this money would be either against Chafee personally or against the creditors to whom he paid it out. Actions at Law in tort or for money had and received might lie against them.

It does not appear that Chafee retained any of it, or that any part of it has been mixed with or remains among the assets of the trust estate now held by this respondent; on the contrary it does appear and is not disputed that Chafee disbursed all that he received to the holders of the notes issued under his Deed of Trust.

If the money did not belong to him as trustee, then his act in taking and disbursing it was a tortious act entirely outside of his powers and duties as trustee, and the trust estate can in no way be holden therefor.

The specific property held by this respondent as trustee and a
signee is held upon special trust for the benefit of the holders
the trust mortgage notes. The equitable and beneficial title th
to is in them.

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If the creditors received the money which belonged to the Quidnick Co., an action at law may lie against them to recover it. The equitable interest of the trust mortgage note holders in the trust estate cannot be reached through this respondent as their trustee but only after judgment at law against them either on execution or upon Bill in Equity filed against them to reach their equitable assets.

All of which is respectfully submitted.

WILLIAM G. ROELKER,

Of Counsel for the Respondent Sweetland, Trustee, etc.

FILED
MAR 10 1890

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 213.

JOHN S. JENKS ET AL., APPELLANTS,

vs.

QUIDNICK CO. ET ALS.

Supplemental Brief of Messrs. B. B. and R. Knight, Respondents, in reply to Point VIII of the Brief of Cornelius S. Sweetland, Trustee, etc., Respondent.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

JOSEPH C. ELY,
ARTHUR L. BROWN,
of Counsel for
MESSRS. B. B. AND R. KNIGHT,
Respondents.

JUDD & DETWEILER, PRINTERS.

2. On this stock said Pomroy, as assignee, had the voting power.

See page 23 of brief.

3. The reorganized Quidnick Company, organized by means of his votes, was recognized by the supreme court of the State of Rhode Island, in the domicile of the corporation, in a suit begun long prior to the present cause, wherein, prior to this cause, the property of the Quidnick Company had been placed in the hands of a receiver.

In the hands of such receiver the property remained until, in pursuance of a decree of said court permitting a sale, said reorganized company sold the property, the purchasers, B. B. & R. Knight and the Union Company, receiving possession thereof from the receiver of said court.

See page 20 of brief.

4. In the present cause Randolph never asked for a receiver of the stock claimed by him; and the pendency of his suit was no bar to said sale under a decree in a prior suit.

5. Randolph having suffered a sale by said corporation to proceed without objection by him is bound by the sale. He cannot be allowed to stand by, to make no objection, to speculate upon the chances of the sale, and to elect to follow the proceeds if the sale is favorable and advantageous to him, and to disaffirm it if he is dissatisfied with the price.

Gregory *vs.* Patchett, 33 Beav., 602.

6. Having allowed the sale to proceed, he has elected to follow the proceeds, and his only remedy is as a stockholder to claim his portion of the proceeds not distributed.

He has no standing as against *bona fide* purchasers of the land. The act of the corporation in selling is binding upon him.

7. All that the complainant is in equity entitled to is compensation and, upon proper accounting, satisfaction of so much of his original judgment as remains unpaid.

Smith *vs.* Vreeland, 1 C. E. Green (N. J.), 198.

In view of the gross inequality and hardship to these respondents which would result from any other course, a court of equity should either dismiss his claim as unconscionable (see point XI of main brief) or confine him to compensation by application of the principles set forth in Clements *vs.* Moore, 6 Wall. U S., 299, a case of fraudulent conveyance, decided in 1867, opinion by Swayne, J., which makes the distinction of relief between law and equity in such cases and lays down the following principle:

"The cardinal principle in all such cases is that the property of the debtor shall not be diverted from the payment of his debts to the injury of his creditors by means of the fraud." Page 313.

Page 312: "When the fact of fraud is established in a suit at law the buyer loses the property without reference to the amount or application of what he has paid, and he can have no relief, either at law or in equity. When the proceeding is in chancery the jurisdiction exercised is more flexible and tolerant. The equity appealed to, while it scans the transaction with the severest scrutiny, looks at all the facts, and, giving to each one its due weight, deals with the subject before it according to its own ideas of right and justice.

In some instances it visits the buyer with the same consequences which would have followed in an action at law.

In others it compels the buyer to account only for the difference between the under price which he paid and the value of the property.

In others, although he may have paid the full value and the property may have passed beyond the reach of the process of the court, it regards him as a trustee and charges him accordingly.

Where he has honestly applied the property to the liabilities of the sellers it may hold him excused from further responsibility."

Respectfully submitted.

JOSEPH C. ELY,
ARTHUR L. BROWN,
Of Counsel for B. B. & R. Knight.

NO. 213.

Supreme Court of the United States.

OCTOBER TERM, 1889.

JOHN S. JENCKS, et al., Appellants,

vs.

THE QUIDNICK COMPANY AND OTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

CORRECTIONS OF ABSTRACT

AND

BRIEF OF

The Quidnick Company, Gorham P. Pomroy, Assignee, etc., Zechariah Chafee, Stephen Harris, Charles B. Gould, the Union Company, Benjamin B. Knight, and Robert Knight.

C. FRANK PARKHURST,
ARTHUR L. BROWN,
AUGUSTUS S. MILLER,
JOSEPH C. ELY,
Solicitors.

WILLIAM L. PUTNAM,
Of Counsel.

PROVIDENCE, R. I.: J. A. & R. A. REID, PRINTERS,
1890.

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Supreme Court of the United States.

OCTOBER TERM, 1889.

JOHN S. JENCKS, *et al.*, APPELLANTS,
vs.
THE QUIDNICK COMPANY AND OTHERS. } *No.* 213.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

CORRECTIONS OF ABSTRACT

AND

BRIEF OF

The Quidnick Company, Gorham P. Pomroy, Assignee, etc., Zechariah Chafee, Stephen Harris, Charles B. Gould, the Union Company, Benjamin B. Knight, and Robert Knight.

Pages of Record.

Sprague Suspension. Oct., 1873.

In October, 1873, the A. & W. Sprague Manufacturing Company, a Rhode Island Corporation, had become embarrassed in its business and obliged to suspend payment of its debts. It was then indebted to a very large number of banks and persons in and out of the state of Rhode Island, to the extent of several millions of dollars. 179 432 449–455

The assets of the corporation were then regarded, both by

the debtor corporation and its officers, and by the creditors, as sufficient to meet all its liabilities, with a reasonable extension for that purpose; and moreover to leave a surplus of some millions of dollars, all of which fully appears by the report of the creditors' committee.

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Amasa Sprague, William Sprague, Fanny Sprague, and Mary Sprague, all of Providence, Rhode Island, were then and since the organization of said A. & W. Sprague Manufacturing Company in the year 1865, had been the principal members and stockholders of said company, and as such under the statutes of Rhode Island were, at that time, severally and individually, directly liable for all its debts on execution against the corporation, said company never having filed the returns required by statute.

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Conference of Creditors.

When the A. & W. Sprague Manufacturing Company felt the pressure it called a conference of the presidents of the leading banks in the city of Providence, which held its obligations, and requested a loan, to be secured by a mortgage.

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Committee Oct. 31, 1873.

A committee appointed at this conference, under date of October 31, 1873, recommended an extension of three years, and a mortgage, securing notes on that time to be given in exchange for existing indebtedness, all substantially the same as Exhibit "A" attached to the bill.

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Creditors' Meeting, Nov. 6, 1873.

Afterwards a general meeting of creditors was called, upon notice through the newspapers in Providence and elsewhere, and was held at Providence on the 6th day of November, 1873. This meeting was largely attended, the mortgage was submitted, and referred to a committee, who employed eminent counsel to examine it critically, and suggest amendments; and as a result the mortgage in its present form was agreed upon, and Rufus Waterman, Amos

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Pages of Record.

D. Lockwood and George C. Nightingale were designated as trustees in the mortgage.

These gentlemen declined to accept unless the creditors would in advance take action to protect them against personal liability. 462-5

Mortgage Executed Dec. 1, 1873.

Meanwhile, more than three weeks having elapsed while said proposed trustees were deliberating, creditors had become dissatisfied with the delay, and certain creditors were preparing to place attachments upon the property, in the belief that the mortgage would not be made as desired by the creditors. (Hopkins referred to page 422, was one of the committee of creditors, as appears p. 460 Int. 6 and 12.) The officers of the company and all the stockholders resident in Rhode Island, requested Zechariah Chafee to accept the office of trustee, under the mortgage, and he, on the first day of December, 1873, did so, no other change being made. It was immediately afterwards published in full in the public prints of the City of Providence. The selection of Chafee was at once approved by the committee having the matter in charge (including Hopkins), and their approval published. 433 422 Int. 10 357-8 Int. 351 441 464 456

Creditors Accept.

Creditors to the number of 449 accepted the extension notes issued under the mortgage, to the amount of $8,717,450, being all the direct indebtedness, as appeared by the books, except about $114,000. 534 359

Transfer of Quidnick Stock. Dec. 2, 1873.

Said Amasa Sprague, William Sprague, Fanny Sprague, Mary Sprague, and said A. & W. Sprague Manufacturing Company were also, on or before said first day of November, 1873, and thereafter until the transfers by them, as hereinafter stated, stockholders in the Quidnick Company, another Rhode Island manufacturing corporation. They held four thousand and twenty-two shares, which with 441 24

the three hundred and twenty-seven shares held by the estate
288 of Edwin Hoyt, deceased, constituted the whole of the capital
289 stock of said Quidnick Company outstanding at the time of filing the bill in this case. These 327 shares passed in November, 1882, to the respondent, Claudius B. Farnsworth, administrator of the estate of Edwin Hoyt, and he continued to hold them during all the subsequent transactions referred to in the bills.

The stock of the Quidnick Company was originally 5000 shares, but all except the said 4349 shares had been bought
353 Int. 51 in by the company prior to the filing of the bill in this cause.

The A. & W. Sprague Manufacturing Company, and the other grantors in said mortgage, were then respectively
449 *et seq.* holders and owners of large amounts of the capital stocks of various banks and other corporations, including said Quidnick Company as aforesaid, and also including sundry manufacturing corporations which were largely indebted or insolvent, and in which the stockholders were also personally liable for the corporation debts under the statute aforesaid, so that under the advice of eminent counsel, both at Provi-
226 dence and from the city of Boston, called in consultation by or in behalf of the creditors, that it was or might be doubtful how far the trustee, if he took a conveyance of all such stocks, might become also personally liable for such corporation debts, the clause was inserted in said conveyance, viz.:
12 " excepting from this conveyance all shares of capital stock
" in any and every corporation, wherever located, belonging
228 " to any or either of the parties of the first part, the same to be
" transferred to said party of the second part upon his
" request in writing, by way of pledge and collateral security
" to secure the performance of the conditions of this instru-
" ment," as by reference to said conveyance will fully appear.

226, 533 Accordingly, the next day after the delivery of the mortgage, Mr. Chafee did call upon the parties to transfer to him their

Pages of Record.

shares in the Quidnick Company, and on the second day of December, 1873, they respectively made to him on the stock transfer-book of said Quidnick Company, transfers in the following form, viz. : 5–6, 226, 533

"For value received, I
"hereby sell and transfer by way of pledge and collateral se-
"curity to Zechariah Chafee, of Providence, to secure the
"performance of the conditions of a trust mortgage, dated
"November 1, shares of the capital stock of the
"Quidnick Company."

Amasa and William thus pledged each 1,082 shares, Fanny 802 shares, Mary 601 shares, and the A. & W. Sprague Manufacturing Company 455 shares — making the 4,022 shares in controversy. 217, 281, 5–6

Transfer of Quidnick Stock, Dec. 22, 1873.

On or about the twenty-second day of December, 1873, by transfers duly made upon the stock transfer-book of the Quidnick Company, Amasa, William, Mary and the A. & W. Sprague Manufacturing Company each transferred to Fanny their respective shares in trust for the equal benefit of all their respective creditors — and Fanny in like manner, transferred her remaining right, title, and interest in her shares to Mary in like trust.

As appears by testimony of Gould, pp. 216-217, the regular transfer-book of the Quidnick Company was produced before the magistrate, and the copies of the transfers annexed to the testimony, pp. 217-221, were verified from said book, and were regularly recorded therein ; and that book is the only book of the company for such record. 216-221

Randolph Suit at Law, Nov. T., 1875.

At the November term, 1875, of the U. S. Circuit Court for the District of Rhode Island, Evan Randolph of Philadelphia, claiming to be a creditor of the firm of Hoyt, Sprague & Co., of New York, in, which firm Amasa and William Sprague were partners, brought 186 *et seq.*

suit by writ of summons against said Amasa and William Sprague and other partners of said firm. This suit was continued in court from term to term until, upon the eighteenth day of August, 1882, said Randolph sued out in said suit a writ of mesne process upon which it was attempted on the same day to attach all the *right, title and interest* of the said William and Amasa Sprague in and to any shares of stock of the Quidnick Company.

Mesne Process, Aug. 18, 1882.

195 It appears that Randolph's case was never tried, but that by agreement between his attorney and A. B. Patton, who does not appear prior to this time as attorney of record in the suit, judgment was entered for the plaintiff March 7, 1883, for $34,500 and costs, taxed at $151 $\frac{61}{100}$, and that thereupon execution issued and levy thereof was attempted upon all the *right, title, and interest* which said William and Amasa Sprague had at the time of attachment in and to any shares of stock of the Quidnick Company; and that an attempted sale thereof was had March 23, 1883, and that Randolph became the purchaser at that sale for the sum of $100.

Judgment March 7, 1883.

By these proceedings Randolph claims to have acquired title to 2,164 shares of the stock in controversy.

202 *et seq.* At the October Term, 1882 (December 18, 1882), of the Supreme Court of Rhode Island, Horatio N. Waterman, claiming to be a creditor of said A. & W. Sprague Manufacturing Company, recovered judgment in a suit commenced April 21, 1882, against said company, and execution was issued thereon March 2, 1883, and on the twenty-second day of March, 1883, was attempted to be levied on "455 "shares of the capital stock of the defendant corporation, "the A. & W. Sprague Manufacturing Company, in the Quid-

Waterman Suit at law, Oct. T., 1882.

Pages of Record.

"nick Company," and on the third day of April, 1883, an attempted sale of said stock was made and Randolph became the purchaser at that sale; and on the same dates an attempted levy and sale was made under the same execution, of 802 shares of Fanny Sprague and 601 shares of Mary Sprague in said Quidnick Company. Randolph became the purchaser at all those sales, for the sum of $175.

By these latter proceedings Randolph claims to have acquired title to 1,858 shares of the stock in controversy.

On the second day of August, 1883, the original bill in this cause was filed.

By stipulation (rec. p. 297–8) all exhibits to defendants' answers are in evidence, and by stipulation (rec. p.551), all printed proofs appearing in the record from p. 298 to p. 551 are in evidence. 297–8 551

R. I. Supreme Court, Eq. 1,932.

Prior to the attempted attachments above set forth, a bill in equity (No. 1,932) had been filed by Chafee as pledgee of the said Quidnick stock and by creditors, *cestuis* under the trust mortgage and pledges, against the Quidnick Company and others, officers, etc., to enjoin the company and its officers from acts alleged to be prejudicial to the interests of the creditors. Under that bill the Quidnick Company, by decree of September 10, 1881, was enjoined from incurring debts or other obligations, and from disposing of any part of its corporate estate or otherwise changing its condition, and its estate was placed in the care of Claudius B. Farnsworth as custodian, William Sprague being at that time its president, in control and management of the corporation, and Mary and Fanny Sprague being, as assignees as above set forth, the holders of the legal title and voting power of said 4,022 shares of stock; this injunction con- 267 268 28–41 48 *et seq*

tinued in force supplemented by various modifying orders, one of which authorized and permitted said company to sell
268 its real estate and manufacturing property, until by decree of June 11, 1884, said injunction was dissolved.

105 *et seq.* Insolvency Proceedings. Meanwhile, pending proceedings in the above suit, certain creditors of said Spragues and of said
269 *et seq.* Sprague Manufacturing Company on the eighteenth day of June, 1883, commenced proceedings in the Supreme Court
247 *et seq.* of Rhode Island against the said Mary and Fanny Sprague,
219 assignees under said transfers of December 22, 1873, to require them to render inventories, and give bonds as such assignees; and the said Mary and Fanny, having failed so to
247 to 250 do, were removed and the respondent Gorham P. Pomroy was appointed in their stead, by decrees entered on the twenty-fifth day of August, 1883.

220 Pending the above proceedings in insolvency and after the orders and decrees therein for the filing of inventory and giving bond had been entered, the said Mary Sprague and Fanny Sprague, in violation of their trusts as assignees as aforesaid and without consideration, each made a transfer on the transfer book of the Quidnick Company of the shares of stock by them respectively held in trust, to said Randolph, dated August 6, 1883, and thereupon said William Sprague,
290 *et seq.* as president, issued to said Randolph a certificate, countersigned by W. Sprague (himself) as secretary, for 4,022 shares, dated August 6, 1883. It also transpired that, about the same
291 *et seq.* time, through the action of said William Sprague, the record books, stock-transfer and certificate books of the Quidnick Company had been sent out of Rhode Island by Randolph's
272 *et seq.* local counsel and were in the possession of one Longstreth, Randolph's counsel of record in this suit, a resident of Philadelphia.

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Pomroy Suit, Eq. 2,161. September 3, 1883, Pomroy filed his bill in equity in the Supreme Court of Rhode Island against the Quidnick Company, the Spragues, Randolph, and others, wherein Pomroy set forth his title as assignee, the title of said Chafee as pledgee, and the claims of said Randolph; and prayed for an adjudication of his, said Pomroy's title to and right to vote on said shares as such assignee, as against said Randolph. Upon this bill subpœna was personally served on Randolph. On the 5th of November, 1883, the bill was taken *pro confesso* against Randolph, and on December 29, 1883, a final decree was entered, adjudicating Pomroy's title to said shares to be good as against Randolph.

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Quidnick Co. Reorganizes. The Quidnick Company on the 31st of August and 1st of September, 1883, reorganized by electing new officers, Stephen Harris, one of the respondents, being elected President, and Charles B. Gould, another respondent, being elected Secretary and Treasurer.

254 *et seq*

Court Recognizes Reorganization. Thereupon, as appears by the bill (rec. p. 48) and as admitted by the answers (rec. p. 87-88), Farnsworth, the custodian appointed under the equity suit, No. 1,932 (see page 7 *ante*) having by the decree of the Supreme Court of Rhode Island regained possession of all the Quidnick property from William Sprague, the former president of the Quidnick Company, the said court, upon the petition of Stephen Harris, the newly elected president, entered its decree, December 10, 1883, permitting the Quidnick Company, as reorganized, to sell its property, thereby recognizing the reorganization.

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It is to be noted that this was under a bill filed in 1881, before either Randolph or Waterman attached or seized on execution.

261 Sale of Property Jan. 16, 1884. At the meeting of December 11, 1883, said Quidnick Co. voted to sell its property; and on the tenth day of January, 1884, said property was sold in parcels at public auction, after extensive advertisement, to the
252 281 Union Company, one of the respondents, without protest or
246 objections on the part of Randolph or any one representing
216 him, although his counsel of record in this suit was present at the sale.

And further, although this suit had then been pending more than five months in the United States Circuit Court, the court did not interfere by injunction with any of said proceedings.

On April 2, 1884, said Union Company sold said Arctic Mill estate to the respondents, Benjamin B. and Robert Knight.

263 The Quidnick Company, having thus turned its property into money, on the 13th of March, 1884, declared a dividend of $20 per share.

264 Interpleader, March 15, 1884. It also voted at the same meeting to file a bill of interpleader in the Supreme Court of Rhode
149 Island, which was filed on the 15th of March, 1884, by said
154 company, the parties respondent (in amended bill) being Chafee, Pomroy, Randolph, and others. All parties respond-
153–4 ent were duly served with process, the said Randolph, non-resident, by personal service; Chafee and Pomroy answered; Randolph did not appear, and the bill was taken *pro confesso*
170 Decree May 1, 1884. against him, and it was decreed May 1, 1884, that he had no interest and was enjoined from asserting any; Chafee and Pomroy were ordered to interplead, and the amount of the dividend was paid into the registry. On the
Decree June 2, 1884. second day of June, 1884, Pomroy was adjudged to have title to said 4,022 shares, but subject to the

Pages of Record.

pledge thereof to Chafee; Chafee was adjudged to be entitled as pledgee to said stock, and as such pledgee to be entitled to receive the dividends, and the fund was ordered to be paid to him, June 2, 1884. 172

Thereafter a further dividend was declared and paid to Chafee as pledgee, under the authority of the said decree, and all dividends by him received as above, were distributed to creditors under said mortgage. 252 264 233

THE PLEADINGS.

Original Bill (as amended) Aug. 2, 31, 1883.

The bill filed August 2, 1883, amended August 31, 1883, sets up Randolph's execution title to the 4,022 shares of Quidnick stock, and prays that the Quidnick Co. be compelled to recognize his title, and that the transfers of the stock to Chafee, and to Mary and Fanny Sprague, be decreed null and void, and for an injunction. 1 *et seq.*

First Sup. Bill, Aug. 31, 1883.

After the appointment of Pomroy as assignee in place of Mary and Fanny Sprague, complainant filed supplemental bill, August 31, 1883, making Pomroy a respondent, and alleging the recognition of his right to said 4,022 shares by said Quidnick Company, the recording by said company of the sheriff's and marshal's deeds of said shares, and the issue of the certificate thereof to him; and praying that said Pomroy's appointment be decreed void as against complainant. 23 *et seq.*

Pleas to jurisdiction and in bar were filed to original and 28–44

first supplemental bill, and after hearing on said bills and pleas, said pleas were overruled May 1, 1884.

After the sale of the Quidnick property to the Union Company on January 10, 1884, and after the sale by the Union Company to B. B. & R. Knight, complainant filed in May, 1884, a second supplemental bill, making as new parties respondent, the new officers of the Quidnick Company; the Union Company, Benjamin B. Knight, and Robert Knight, and Claudius B. Farnsworth, administrator of the estate of Edwin Hoyt, praying that the acts of the Quidnick Company in selling property, be decreed void, and that the purchasers reconvey to the Quidnick Company.

Second Sup. Bill, May, 1884.

44 *et seq.*

All parties respondent seasonably answered.

174 September 26, 1884, general replication filed.

Sup. Sheet. April 9, 1886, Honorable Le Baron B. Colt, Circuit Judge, filed his opinion, adverse to complainant.

552 June 8, 1886, decree entered, dismissing bill with costs.

March 30, 1889, Zechariah Chafee, trustee, one of the respondents, died; and during the current term of this court, Cornelius S. Sweetland, trustee, appointed to succeed Mr. Chafee by the Supreme Court of Rhode Island, became a party respondent, too late to appear as such in the printed record.

Pages of Record.

BRIEF.

I. Randolph's Title is Invalid.

A.

The proceedings in Waterman's suit and upon execution therein, involving 1,858 shares, are void.

1. William Sprague, upon whom the service of execution was made, was not the Treasurer of the Quidnick Company at the time of levy. 203–207, 223, 286, 532

   Benjamin G. Chace appears to have been the treasurer at this time. 286

2. It nowhere appears that said shares were advertised "at least ten days before they shall be exposed and "offered for sale," as provided in

   Pub. Stat. of R. I., Cap. 223, §§ 9, 21. pp. 614, 616.

"SEC. 9. In all cases when execution shall be levied "on any goods or chattels, such goods and chattels "shall be kept in the possession of the officer and shall "be advertised at least ten days before they shall be "exposed and offered for sale, in order that the person "who owns such goods or chattels may, if he think fit, "pay the money due, together with the costs which shall "have accrued thereon, and thereupon have his said "goods or chattels restored to him again."

"SEC. 21. The said stock or shares or so much thereof "as shall be necessary shall be advertised and sold in

"the same manner as other personal property levied on "by execution," . . .

The provisions of statute as to advertisement must be followed and the statute must be strictly construed.

Wilcox v. *Emerson*, 10 R. I. 270.

Titcomb v. *Union Marine Ins. Co.*, 8 Mass. 326, 334.

Howe v. *Starkweather*, 17 Mass. 240, 242, 243.

Henderson v. *Hays*, 41 N. J. Law, 387, 391.

3. The levy upon the shares of Mary and Fanny Sprague is void, having been made upon execution against the A. & W. Sprague Manufacturing Company, such levy being prohibited by

Pub. Stat. of R. I., Cap. 155, § 25, p. 390.

"SEC. 25. No person shall hereafter be imprisoned or "be continued in prison, nor shall the property of any "such person be attached, upon an execution issued "upon a judgment obtained against a corporation of "which such person is or was a stockholder."

See *Bank* v. *Francklyn*, 120 U. S. 747.

B.

The proceedings upon attachment and execution in Randolph's suit, involving 2,164 shares, are void.

188 1. The marshal's return of attachment shows service of the writ on "William Sprague, President," and on "Zechariah Chafee, he claiming to be treasurer of the "Quidnick Company."

This is not a compliance with

Pub. Stat. of R. I., Cap. 207, § 22, pp. 569, 570.

Pages of Record.

"SEC. 22. Whenever a writ shall command the attach-
"ment of the shares of the defendant in any corpora-
"tion . . . it shall be served by leaving an attested
"copy . . . *upon the treasurer thereof or the person*
"*executing the duties of treasurer*" . . .

Zechariah Chafee was not the treasurer at the date of attachment (August 18, 1882) having been removed July or August, 1881; even had he been, such return would have been insufficient. 223, 286, 532

Benjamin G. Chace appears to have been treasurer at this time of levy, both of attachment and execution. 286

2. The levy of execution as appears by the marshal's return was made by service upon "William Sprague, "Treasurer," and "Zechariah Chafee, claiming to be "treasurer." 197

Neither William Sprague nor Chafee was treasurer at the time of levy and the levy is not in conformity with 223, 286, 532

Pub. Stats. of R. I., Cap. 223, § 20, p. 616.

"SEC. 20. Whenever execution shall issue against a
"defendant whose stock or shares in . . . any body
"corporate . . . shall have been attached, the
"officer charged therewith shall serve a copy of the
"same . . . *upon the treasurer thereof or person*
"*executing the duties of treasurer*," . . .

If the notice required by statute is not given to the corporation, the omission is fatal.

"The charter requires service on the Mayor of the city.
"No such service was made. There was no Mayor in office
"at the time. The last Mayor had resigned and his resigna-
"tion had taken effect. Service on him was of no more avail
"than service on an entire stranger."

Amy v. *Watertown*, 130 U. S. 315.

"The cases are numerous which decide that where a par-
"ticular method of serving process is pointed out by statute,
"that method must be followed, and the rule is especially
"exacting in reference to corporations."

Amy v. *Watertown*, *Supra*. 317.

Princeton Bank v. *Crozer*, 22 N. J. Law, 383.
Stamford Bank v. *Ferris*, 17 Conn., 259.

3. The levy of execution, sale, return, and deeds, are all void because they do not state the number of shares levied upon and sold.

Blair v. *Compton*, 33 Mich., 414, 442-3.

The statute permitting attachment of shares in a corporation is in derogation of the common law, and is to be strictly construed. The remedy is confined to the state of facts, for which provision is made, and is not to be in any wise enlarged by construction.

Van Norman v. *Jackson*, 45 Mich. 204.
Blair v. *Compton*, 33 Mich. 440.
Goss, Etc., Mfg. Co. v. *The People*, 4 Bradwell (Ill.), 510.

Rhode Island courts require strict compliance with statutory provisions regarding attachment and execution.

Sheldon v. *Comstock*, 3 R. I. 84.
Whitaker v. *Jenckes*, 9 R. I. 391.
Wilcox v. *Emerson*, 10 R. I. 270 (*supra*).

Randolph's bill must therefore be dismissed, because he fails to establish his title, even admitting that the prior conveyances of the stock were fraudulent.

(Title put in issue by answer, rec. pp. 62, 66, 80, 83.)

"The title of the grantee is good against even creditors, "unless they protect themselves against him by pursuing that "prescribed course by which alone the property can be made "available for the satisfaction of debts.

"The process must be valid, and all the steps subsequent "to the seizure which are prescribed by law for the disposi- "tion of the property, must be pursued."

Bump, Fraud. Conv., 3d Ed. pp. 461-2.
Wanamaker v. *Bowes*, 36 Md. 42, 57.
Russell v. *Dyer*, 40 N. H. 172.

"Not that a creditor may seize it without any legal process, "in the hands of the fraudulent vendee, and appropriate it of "his own head to the payment of the debt due by the vendor; "neither the general principles of law, nor the particular laws "which are enacted for the collection of debts, confer any such "right on the creditor. He may cause it to be appropriated to "the payment of his debt; but he can do this only in the mode "which the law prescribes; and if he departs from that mode, "his proceedings are unauthorized by law, and therefore "wrongful, and he thereby makes himself liable as a wrong- "doer to the owner of the property, who, where there has been "no conveyance is the debtor, and where there has been a "fraudulent one, is the vendee."

. . . . . .

"In the case of an attachment, the creditor must pursue "the action in which the property was attached, to judgment

"and execution; and the latter must be in the manner "pointed out by law. If any of these steps are omitted, the "property is discharged from the lien created by the attach- "ment or execution, and must be restored to the owner."

Owen v. *Dixon*, 17 Conn. 492, 497-8.
Russ v. *Butterfield*, 6 Cush. 242.

"But the party who claims under the deed must show a "valid title. It must appear that his deed is duly made, and "if it fails to recite the essential facts, the burden lies upon "him to prove them by evidence *aliunde*. Failing in that, "there is nothing for the adverse party to contradict; it is a "failure on the part of the sheriff's grantee to establish his "case."

Henderson v. *Hays*, 41 N. J. Law 387-391.

And see

Wilcox v. *Emerson*, 10 R. I. 270 (*supra*).

II. The Supreme Court of Rhode Island acquired Prior Jurisdiction and settled the title.

A.

It appears by the complainant's second supplemental
48 bill "that Claudius B. Farnsworth was appointed by said
49 "Supreme Court of Rhode Island custodian of all the estate "and property of said Quidnick Company by a decree entered "by said court, September 10, 1881," long before Randolph had attached or Waterman had levied his execution on said shares of stock.

Pages of Record.

The suit is set out fully in Mr. Chafee's plea and in the supplemental bill. 41 *et seq.*

In that suit the Supreme Court of Rhode Island assumed control of the whole property of the Quidnick Company by the appointment of a receiver in 1881.

This receiver was in possession of this property and the said bill pending in the State court at the time Randolph and Waterman levied attachment and execution.

In this suit the said State Court, on petition of the reorganized corporation, recognized it, and in response to said petition made a decree entered on the tenth day of December, A. D. 1883, "so far modifying its decree of September 10, 1881, 48
"as aforesaid, as to permit and authorize the said Quidnick 49
"Company to sell and dispose of its real estate and mills "and the machinery therein contained, its stock in process "and other personal property in and about said mills."

Farnsworth, the receiver, states, Ans. (to Int. 4): "I 286
"made an application to the Supreme Court to obtain a writ "of assistance for the possession of the personal property of "the Quidnick Company from William Sprague. An order "was made by the Court that the writ should issue unless the "property was delivered to me on or before a day named in "the order. The property was delivered to me, so that the "writ was not issued. I am not certain about the day, but "it was early in December, 1883. I received possession of "the real estate at the same time. The order only specified "the personal property.

"Int. 5. Who delivered to you the possession of the real "estate of the Quidnick Company?

"Ans. No one delivered to me possession of the real "estate. When the personal property was given up to me "by William Sprague he left the possession and I took it.

"He did not deliver it to me. As my original order included "the real estate as well as the personal, and their use neces- "sarily went together, I took possession of the real estate in "order to take care of it under the court's order of Septem- "ber 10, 1881."

287-8 Ans. to Int. 12: "Under the authority of the Supreme "Court of Rhode Island I delivered the real estate to the "parties to whom the Quidnick Company sold the property. "I delivered it to the agents of the Union Company, who were "the purchasers."

Thus the Supreme Court of Rhode Island, having assumed jurisdiction before the levy of attachment and execution by Randolph and Waterman, and having taken the *res* into its actual custody, acquired exclusive jurisdiction over it.

Its consent to the sale and the delivery by the Receiver or Custodian, gave the Union Company an incontestable title to the real estate.

It is not necessary to cite cases showing how scrupulously courts of the United States refrain from interfering with the action of the State Court when it has obtained possession of the *res*; but many of the cases are conveniently grouped in

Bank v. *Northwestern Manufacturing Co.*, 28 Fed. Rep. 113.

See also

Heidritter v. *Elizabeth Oil Cloth Co.*, 112 U. S. 294.

We claim that this court, having jurisdiction of the *res*, that is, the property of the Quidnick Co., and possession of it, its action in disposing of that possession and recognizing the title of the Union Company which the possession accompanied and followed, is conclusive as against these proceedings.

The Quidnick Company after the sale, out of abundant caution, at once brings the proceeds of sales made under this order into court in the case *Quidnick Company* v. *Chafee*, (Eq. 2,233 pp. 149-173) and on this *res* in a cause wherein said Randolph had personal service, the court adjudicates as to the title to the fund. 50–51 153–4

B.

Further, prior to filing the first bill in this cause, statutory proceedings had been begun in the State Court alleging gross breaches of trust, to compel said Fanny and Mary Sprague, assignees of the Quidnick stock for the benefit of creditors, to perform their duties under the statute in such cases made and provided. These proceedings resulted, by reason of their default, in their removal and the appointment of said Pomroy as assignee in their stead. 104–148

Pomroy was thus appointed, under the Insolvency Statute, viz. :

[*Public Statues Rhode Island 1882.*]

CHAPTER 237.

Gen. Stat. Chap. 181.

OF PROCEEDINGS IN INSOLVENCY.

6 R. I. 321. 6 R. I. 512. 7 R. I. 22.

Power of supreme court over assignees, to require inventory and bond.

SECTION 1. The supreme court may, upon the petition of any creditor interested in a deed of assignment made by a debtor for the benefit of creditors, upon due notice and for cause shown, by summary order, require the assignee named in such deed to render on oath to said court an inventory of the effects, estates and credits conveyed by such deed, so far as the same can be ascertained, and to give bond with sufficient surety or sureties to the satisfaction of said court for the faithful performance of the trusts of such deed.

Power of court to remove assignee.

P. L. Chap. 593. 4 R. I. 401.

SEC. 3. The supreme court shall, upon the petition of any creditor interested in any deed of assignment made by a debtor for the benefit of creditors, upon due notice and for cause shown, remove any assignee named in such deed of assignment, who shall neglect to render an inventory and schedule as required by this chapter or shall neglect to give a bond as required by said court, and may, upon the petition of a majority in interest of the creditors interested in any such deed of assignment, upon due notice and for cause shown remove the assignee named therein from his office and trust.

Of appointment of new assignee, and powers and duties of.

SEC. 4. In case of such removal of an assignee, said court shall appoint one or more suitable persons to receive, take and recover all the effects, estates and credits conveyed in such deed of assignment, and the same to hold and dispose of for the uses, intents and purposes set forth in such deed of assignment, which person or persons so appointed shall, by operation of law, have and enjoy all the rights and estates and be subject to all the duties, liabilities and responsibilities that appertain by virtue of such deed of assignment to the assignee removed.

The section of Chap. 181, General Statutes of 1872, corresponding with Sec. 4 of the act of 1882, and being the statute in force when these transactions occurred, was as follows :

"SEC. 14. In case of such removal of an assignee, said court "or justice shall appoint one or more suitable persons to receive, "take and recover all the effects, estate, and credits conveyed in "such deed of assignment; and the same to hold and dispose of "for the uses, intents, and purposes set forth in such deed of "assignment; which person or persons so appointed shall, by "operation of law, have and enjoy all the rights and estates, and "be subject to all the duties, liabilities, and responsibilities that "appertain by virtue of such deed of assignment to the assignee "or assignees removed."

Pages of Record.

104 149 The action of the court in removing Fanny and Mary Sprague as assignees and trustees, and appointing Pomroy in their place was in continuance of the proceedings under the 105 above statute commenced June 18, 1883, and was after notice 128 by publication, so as to reach all parties interested.

It certainly vested the legal record title to the stock in Pomroy, and authorized him to represent the stock at all meetings of the corporation.

Until Mr. Chafee, who had superior title as pledgee, interfered, Mary and Fanny Sprague as assignees, and Pomroy as their successor, had the voting power on this stock ; and, so far as Mary and Fanny Sprague are concerned, it nowhere appears that this right was ever disputed.

Hoppin v. *Buffum*, 9 R. I. 513.

The appointment of Pomroy as successor of Mary and Fanny in the assigneeship vested in him a complete title to the Quidnick stock by operation of law without any record on the books of the corporation.

This was held with reference to a sheriff's deed in

Lippitt v. *Wood Paper Co.*, 14 R. I. 301.

And in *Sayles* v. *Bates*, 15 R. I. 342, 346.

The language in the statute relative to sheriff's sales is that the deed shall vest in the purchaser "all the right, title and "interest of the defendant."

The language of the statute applicable to this case is more effective, namely : "Shall by operation of law, have and enjoy "all the rights and estates" . . . . "that appertain by "virtue of such deed of assignment to the assignee or assig-"nees removed."

C.

Some explanations as to the nature of these assignments to Mary and Fanny Sprague may be convenient.

By the law of Rhode Island the assent of creditors to such an assignment is presumed.

Smith v. *Millett*, 11 R. I. 528, 533.

Stone v. *King*, 7 R. I. 358.

Sadlier v. *Fallon*, 4 R. I. 490.

It was early settled in Rhode Island that such assignments were valid even when they covered only a part of the debtors' property and contained provisions for release of debts, and preferences.

Spencer v. *Jackson*, 2 R. I. 35.

Moreover the actual assent of creditors was given prior to the institution of this present suit, and the benefit of the assignments claimed by the creditors in the proceedings in the Supreme Court of Rhode Island to compel said assignees to file a bond and inventory, and for their removal in consequence of their neglect to comply with the order of said court and for the appointment of a new assignee in their stead.

104

105 *et seq.*

III. The relief prayed for cannot be had by reason of Equity Rule No. 94, and principles akin thereto.

Because a stockholder cannot under such a bill set aside conveyances of the corporate property.

The original bill was filed to obtain a certificate of stock from the Quidnick Company.

In his supplemental bill Randolph alleged that the Quidnick Company issued to him a certificate of stock four days after filing the original bill.

Thus by his own showing he now has no right to proceed except as a stockholder. As such he asks to annul alleged proceedings of the corporation; he alleges nothing bringing him within the principle of Equity Rule No. 94.

Taylor v. *Holmes*, 127 U. S., 489.

Brewer v. *Boston Theatre*, 104 Mass., 378.

Dunphy v. *Traveller News. Asso.*, 146 Mass. 495.

Pages of Record.

IV. Randolph is estopped, as against the bona fide purchasers, for full value without notice.

Randolph was charged with notice of the sale of these mill estates at public auction, which sales were largely advertised both in New York and in Providence, his counsel of record in this cause was present at the sale, and Randolph allowed the same to proceed without protest. He also had personal notice of all the proceedings in the State Courts. 252,265 216 246 281

With such knowledge Randolph allowed the Union Company to pay for the land so sold without objection, and thereafter allowed the Union Company to sell to innocent parties without notice of objection.

The Union Company, the purchaser from the Quidnick Company, acquired a good title to the lands because it was a *bona fide* purchaser for value.

The estates were sold for a fair price, at public auction after full advertisement, and upon active bidding. 280, 283, 246, 252, 265

Randolph should not be allowed, having this notice and entering no protest, to avoid these sales as against *bona fide* purchasers from the purchaser at said auction for full value without notice.

No notice could be imputed to the Union Company and much less to the purchasers from it, by reason of the pendency of any bill between stockholders.

The rule of *lis pendens* does not apply to these purchasers.

Green v. *Rick*, 121 Penn. St. 130.
Paine v. *Root*, 121 Ill. 77.
Dovey's Appeal, 97 Penn. St. 153.

V. The mortgage deed, special transfers of the Quidnick stock to Chafee, and the assignments of April 6, 1874, were properly executed.

62, 79 The bill denies the execution of the mortgage, but it is fully maintained in the answers.

217, 218 The bill admits impliedly at the foot of p. 5 and top of p. 6, that the special transfers of Quidnick stock, December 2, 1873 to Mr. Chafee were executed.

1 63, 84 The answers specifically allege their execution.

65, 85 Nothing whatever is said in the bill about the assignments of April 6, 1874, but they are set up in the answers.

A.

The Circuit Court having found the mortgage deed to be valid, has by necessary implication decided this question of execution affirmatively.

446, 443 The answers of Amasa and William Sprague and the A. & W. Sprague Manufacturing Co., filed in another suit and sworn to May 12, 1876, admit the execution of the mortgage and the assignments by all parties.

426, 428 Amasa, William, Fanny and Mary Sprague, and the A. & W. Sprague Manufacturing Company, in their answer in the case *People's Savings Bank et al.*, v. *Zechariah Chafee et als.* ratify the substitution of Mr. Chafee's name in the mortgage, and admit its execution and the execution of the assignments of April 6, 1874.

" His petition in bankruptcy, filed on April 9, 1878, in
" which he stated on oath that he did not own any real estate,
" nor hold any interest in any real property except a leasehold
" that would expire in less than a month, though not a tech-
" nical estoppel as a defence of this suit, is at least evidence
" of the execution and validity of the instrument in question.

Pages of Record.

" In view of these facts which appear from the proofs and " pleadings of the complainants, we do not deem it necessary " to review the mass of testimony offered," etc.

Dent v. *Ferguson*, 132 U. S. 50-58.

The execution of the special transfers of the Quidnick Co. stock, December 2, the next day after the mortgage was completed, by Amasa, William, Mary, Fanny, and the A. & W. Sprague Manufacturing Co. to Chafee, in pursuance of the terms of the mortgage, is an affirmation of its execution by all parties concerned in it. 217 218 223

B.

As to transfers of the Quidnick Co. stock to Mr. Chafee December 2, in pursuance of the provisions of the trust mortgage, the execution of them is substantially admitted by the bill, and is testified to by Mr. Chafee and Mary Sprague. 5-6 223 514 533

William Sprague's transfer of Quidnick Co. stock, December 2, 1873, was by Amasa Sprague, his attorney, page 218.

The authority of the attorney is not questioned in the bill, in referring to this matter, top of page 6.

The mortgage of November, 1873, which stipulated for the transfer to Mr. Chafee of the Quidnick Co. stock and other stock, was acknowledged, and thus ratified by William Sprague December 6, 1873, page 17.

The power of attorney to Amasa Sprague from William Sprague, July 2, 1859, page 385, may well be construed to cover this transaction, as it contains the words " and perform all my individual business " ; and there is abundant evidence in the case to show that William and Amasa Sprague gave it this broad practical construction. William Sprague never repudiated the transaction and never claimed the stock.

C.

The execution of the assignments of April 6, 1874, is assumed, proven in scores of places in the record and is nowhere denied.

D.

Finally, as to all of them, we adopt the language of Judge Colt in

Moulton v. *Chafee*, 22 Fed. R., 27.

"After the various acts going to show a ratification on the "part of the grantors, added to the fact that all but a small "fraction of the creditors accepted in good faith the notes "issued under the deed, the length of time that has elapsed, "and the equities that have intervened, the proposition that "this instrument is void because unauthorized can hardly be "seriously entertained in a court of equity."

Morawetz on Corporations, second edition, Sec. 630.
Railway Companies v. *Keokuk Bridge Co.*, 131 U. S. 371, 381.

VI. Laches and Limitations.

A.

62, 64
80, 81

We refer to the answers setting up this defence for the purpose of showing that laches and limitations were insisted on.

Randolph was a resident of Philadelphia, a creditor of Hoyt, Spragues & Co., of which William Sprague and Amasa Sprague were partners at the time of the suspension, and therefore had the opportunity and occasion of knowing about the matters here in controversy.

Pages of Record.

In 1875 he commenced his suit by writ of summons against Amasa and William Sprague in Rhode Island, and of course employed attorneys in Rhode Island for that purpose. 186

At this time he was certainly put on inquiry, and the presumption that he had full knowledge cannot be resisted.

He did not issue his writ of attachment against this stock in dispute until August 14, 1882. 187

Here was a delay of nearly nine years.

It will not be questioned that Waterman knew of the deed cotemporaneously with its execution; in fact he was present at the meeting of the creditors and made no objection to it. 211 202

He commenced no suit until 1882, also nearly nine years after the mortgage in controversy was made.

B.

The question seems to be whether the fact that in one case no attachment was made, and in the other no suit was commenced for nine years will avail us, the complainant having proceeded with reasonable diligence after judgments were obtained.

C.

The property in dispute being personal property, all direct right of action or remedy for it against Mr. Chafee was barred before Waterman brought his suit, or Randolph took out his writ of attachment.

By the Public Statutes of Rhode Island of 1882, C. 205 Sec. 3, being a reenactment of the previous statute, all actions on the case, of account, detinue and replevin for this property were barred at the close of the year 1879.

It seems to us that, as to the whole case, the Court can

apply two of the three usual rules touching this subject matter, namely:

"*First*, the analogy of the statute and of the prescription "which flows from the statute, and

"*Second*, the rule of laches.

"*Third*, it may also apply the statute directly to so much "of the case as comes through Waterman.

D.

Waterman and Randolph are both within the analogy of the statute barring any suit at law against Mr. Chafee on any claim to this stock after six years' delay.

In *Carroll* v. *Green*, 92 U. S., 509, the Court, p. 516, closed as follows:

"If a claim like that of the appellees, sued at law, would "have been barred at law, their claim is barred in equity. "This proposition is too clear to require argument or authori- "ties to support it."

Now conceding that the roots of this bill in equity run back to the beginning of the proceedings at law in 1882, we think it cannot stand any better, according to the broad principles of the equity courts, than if the law authorized initiatory proceedings by bill and these had been commenced in 1882.

E.

But this aspect of the case comes out clearer looking at it from the reverse position of the principles of prescription.

The supposed strange condition of the law which, after carefully establishing Mr. Chafee's title against any direct attack, would permit it to suffer by indirection, seems to be

disposed of by the following cases, in this court and in Massachusetts.

In *Chapin* v *Freeland*, 142 Mass. 383, decided Sept. 8, 1886, the question being about some counters, which were chattels, the court said, pp. 386 and 387, as follows:

"What we do decide is, that, where the statute would be a "bar to a direct proceeding by the original owner, it cannot "be defeated by indirection within the jurisdiction where it is "law. If he cannot replevy, he cannot take with his own hand."

This Court, in *Campbell* v. *Holt*, 115 U. S. 620, decided Dec. 7, 1885, said on pp. 622 and 623 as follows:

"By the long and undisturbed possession of tangible prop- "erty, real or personal, one may acquire a title to it, or own- "ership, superior in law to that of another, who may be able "to prove an antecedent and, at one time, paramount title. "This superior or antecedent title has been lost by the laches "of the person holding it. * * * What the primary "owner has lost by his laches, the other party has gained "by continued possession, without question of his right."

* * * * * * *

"It may, therefore, very well be held that, in an action to "recover real or personal property, where the question is as to "the removal of the bar of the statute of limitations by a leg- "islative act passed after the bar has become perfect, such act "deprives the party of his property without due process of law. "The reason is, that, by the law in existence before the "repealing act, the property had become the defendant's."

Therefore, before the proceedings of either Waterman or Randolph were commenced, Chafee had acquired by prescription a title good against the debtors, and therefore good as against any person claiming under them.

F.

"Nothing can call forth" — a court of Equity — "into "activity but conscience, good faith, and reasonable diligence. "Where these are wanting, the court is passive, and does "nothing."

Brown v. *The County of Buena Vista*, 95 U. S. 157, 160.

"Independently of any statute of limitations, courts of "equity uniformly decline to assist a person who has slept "upon his rights and shows no excuse for his laches in as- "serting them.

"*Speidel* v. *Henrici*, 120 U. S. 377-387."

The terms of the rule and its reasons apply in cases of creditors' bills with equal force (1) to unreasonable delay in commencing suit at law on the debt, (2) to unreasonable delay in prosecuting it to judgment, (3) and to unreasonable delay in commencing subsequent proceedings in equity.

This seems to be recognized in

Aldridge v. *Muirhead*, 101 U. S. 397.

To get the facts and dates we look at the decision at the circuit in

Muirhead v. *Aldridge*, 14 N. B. R. 249.

Muirhead was the assignee in bankruptcy of one Thomas Aldridge, who had been insolvent for many years and whose wife Anne commenced purchasing real estate in 1861. The petition in bankruptcy was filed in 1873; and the bill was brought by the assignee against the wife to secure the real estate she had been purchasing.

The bill was in principle analogous to one brought by one judgment creditor in behalf of all; and the assignee was appointed in 1873, and proceeded so promptly that the decision was rendered on appeal at the circuit in 1876.

The date of his appointment was analogous to the date of obtaining a judgment at common law on a creditor's debt.

Yet this court on appeal dismissed the bill, perhaps not relying wholly on laches, in the following terms on p. 402:

"After such delay we are not inclined to set aside what "has been permitted to remain so long undisturbed, simply be- "cause of an inability to explain with exact certainty from "what precise source the money came which went into the pur- "chase of each particular parcel of property."

Price v. *Yates*, decided at the circuit, western district of Pennsylvania, March, 1879, reported in Albany Law Journal, vol. 19, p. 295, was brought to enforce personal liability of a shareholder; but the assessment of the comptroller had been delayed more than six years.

The court held that, although this assessment was an essential preliminary to the action, yet the statute was a bar; and it applied the principle of *Codman* v. *Rogers*, 10 Pick. 112.

Indeed the principle governing the case at bar seems to be the same laid down for the equity courts in this case of *Codman* v. *Rogers*, in which it was held that, it is reasonable to require that a demand, which is a pre-requisite, be made within the time limited by statute for bringing the action.

We presume that this case will be accepted as the settled law for the equity courts, and yet we refer for its recognition to:

Angell on Limitations, 6th edition, Sec. 96.

Buswell on Limitations and Adverse Possession, Sec. 159.

Wood on Limitations, Sec. 118.

That laches is equally fatal at one stage as at another, is illustrated in *Sebring* v. *Sebring*, 43 N. J. Equity 59, found also in 10 *Atlantic Reporter*, 193.

Here the bill was dismissed by reason of six years' delay in prosecution after it was filed. It was dismissible under the rule, but the chancellor said as follows, page 61 :

" The Court would, I think, be bound, in the absence of any " express regulation on this subject, and simply in the enforce- " ment of a general principle of justice, to dismiss the com- " plainant's bill in any case where it appeared he had been " guilty of such extraordinary negligence as has occurred in " this case."

The two rules are perhaps as well stated in Pomeroy's Equity Jurisprudence, Vol. 1, Secs. 418 and 419, as anywhere.

G.

As to so much of this case as rests on Waterman's claim, we think there is a direct bar by the Statute of Limitations.

In *Waterman* v. *Sprague Manufacturing Co.*, 14 R. I. 43, there was a strong intimation, p. 46, that this defence could be set up by us.

That we may set up the Statute of Limitations, seems to have been directly decided and held in the following cases and text books :

Wood on Limitations, Sec. 41.
Lord v. *Morris*, 18 Cal. 482, 490.
McDowell v. *Goldsmith*, 24 Md. 214, 230.
Hodges v. *Taylor*, 57 Texas, 196.
Schmucker v. *Sibert*, 18 Kansas, 104.

Pages of Record.

The law of Texas on this point is recognized in *Ewell* v. *Daggs*, 108 U. S. 143-147.

The complainant made allegations in the bill, p. 4, that the Sprague corporation orally revived the indebtedness.

The evidence put in by complainant on this point is from Amasa Sprague, p. 178, and Waterman, p. 210.

Amasa Sprague entirely fails to fix any period when his interviews with Waterman took place; and Waterman's testimony in connection with cross-examination, at the foot of p. 210, is equally indefinite as to whether it was in 1875 or 1878.

The whole testimony is also equally indefinite as to whether the obligation was recognized as that of Amasa Sprague personally, or of this particular corporation.

Waterman testifies that Amasa Sprague meant "the manufacturing firms," but he fails to give any conversation which sustains this. 210

H.

Waterman's presence at the creditors' meeting without objection, and his recognition of Chafee by asking him for payment, operate especially as against Waterman's share in this case, on the ground not 211

1. Of estoppel, nor
2. That he had thus become a party to the deed itself; but
3. By acquiescence.

This acquiescence has force in equity as fortifying the defence of laches, both giving it strength in all cases, and authorizing the court also in particular cases to shorten up the usual period.

Where the ground of objection is, as at bar, purely of constructive or technical fraud, and is claimed therefore to turn on mere details of the method of doing, acquiescence may well be regarded as effectual.

Pomeroy's Equity Jurisprudence, Sec. 816.

A leading case is *Ex parte Stray*, 2 L. R. Ch. App. cases 374.

In conclusion : Both Waterman and Randolph, knowing of the execution of the deed at a time when either of them, as the bankrupt law then stood, could have broken it up, and knowing that the deed was intended to promote equality among creditors, as was also the bankrupt law, and knowing that, if the mortgage was not allowed to stand, bankruptcy would intervene, and that they would only get their proportions of the estate, delayed action until after, in 1878, *the bankrupt law was repealed, and until after the claims of the other creditors were largely barred by the Statute of Limitations, and now seek to defeat the equality among creditors which would have been the result of hostile action within any reasonable time after the execution of the mortgage, and by defeating that equality to take from the other creditors, not only sufficient for the full payment of their debt, but an estate worth several hundred thousands of dollars.*

This delay seems too full of inequitable results to be borne with by this Court.

VII. Randolph as a Creditor of the firm of Hoyt, Spragues & Co., has no Interest.

A.

All parties agree that each of the Spragues was liable for the debts of the A. & W. Sprague Manufacturing Co., although

we question the method of proceeding by Waterman. (See pp. 13-14 *ante*.)

See Quidnick Co.'s answer, rec. p. 83, proceedings on Waterman's execution, rec. p. 20, Joslin, rec. p. 439, and the statutes fully recited in *Bank* v. *Francklyn*, 120 U. S., p. 747.

B.

The stockholders stand somewhat like joint and several sureties in those states where judgments must be obtained against the principal before proceeding against the surety.

The language of the statute, as given in *Bank* v. *Francklyn*, p. 752, is "jointly and severally liable."

Therefore, whatever its nature in other respects before judgment obtained, the liability ranks against individual property as an individual liability, in preference to those of partnerships.

Randolph was only a creditor of the partnership of Hoyt, Spragues & Co.

At the time the mortgage at bar was made, it was understood that Hoyt, Spragues & Co. would take care of their own liabilities, pp. 179, 453, 454.

Mary, Fanny and Amasa Sprague had no liabilities except as stockholders, pp. 353, 354, 513 and elsewhere.

All the estate which passed under the mortgage was not sufficient to pay the debts secured by it, and after applying the 4,022 shares of Quidnick Co. stock upon them, there will still be a deficiency, p. 534.

The rule of priority of individual creditors on individual assets is everywhere recognized in bankruptcy and insolvency proceedings, and in this Court by the rules of equity.

Partly on this account, in *Micou* v. *National Bank*, 104, U. S. 530, this Court refused to disturb an arrangement by

which individual property was applied to guardianship liabilities, recognizing, p. 543, that the same marshaling would have resulted, if proceedings in bankruptcy had been seasonably taken.

So in *Murrill* v. *Neill*, 8 Howard, 414, 426, the rule is laid down in the broadest terms.

This case was not one of insolvency or bankruptcy, nor of winding up a partnership, but an attempt to secure the aid of the court sitting in equity to withdraw, contrary to this equitable rule, individual funds from individual creditors for partnership debts.

See also *McGinty* v. *Flannagan*, 106 U. S. 661, 662.

We do not mean that, if we were the actors, this Court, except in marshaling of both partnership and individual assets, would exclude a partnership creditor who had obtained a legal right as against individual assets, but only that it will not, in behalf of other actors, violate this rule of equity.

The alternative of the mortgage at bar was bankruptcy; in the event of which Randolph certainly would have received no benefit from the assets here in dispute.

According to the rules of equity therefore, whether the words are used in their strict or in their broad sense, he had no real interest in these assets.

The Supreme Court of Rhode Island has repeatedly laid down the general principle.

> *Colwell* v. *Weybosset Nat. Bk.*, R. I. Index CC, p. 89, decided July 14, 1888, to appear in 16 R. I. affirmed, R. I. Index DD 181.

The full extent of our claim seems to be recognized in *Smith* v. *Selz*, 114 Ind. 229, also found in 16 N. E. Rep. 524.

That case involved the setting aside of a conveyance

claimed to be fraudulent. A large portion of it related to a question of pleading; but the court said:

"If the setting aside of a conveyance results in no benefit "to the creditors, and does nothing more than merely harass "the parties to it, or if the debtor has no substantial interest "in the property conveyed, a Court of Equity will refuse to "interfere."

VIII. The Instrument of Nov. 1, 1873 not Fraudulent.

A.

We will show hereafter that there is no opportunity for claiming that this instrument was tainted with any intended fraud.

B.

In common with the other eastern New England States, the law of Rhode Island does not favor the multiplication of frauds by construction of law.

It is said to be the law of England, Maine and Massachusetts, that except under extraordinary circumstances, there are no constructive or technical frauds with reference to mortgages.

Brett v. *Carter*, 2 Lowell, 459.
Justice Strong in *Miller* v. *Jones*, 15 Nat. Bank. Reg. 154.

We find a very late expression in England in 1886, as follows:

"When learned judges have said that, if the necessary "result of a settlement is to hinder creditors, it must be "taken to have been executed with that intent, this observa-

" tion must be taken as applied to the character of the par-
" ticular case in which it was made."

Grantham, J., in *ex parte* Mercer, L. R. 17 Q. B. D., C. A., 290-295.

In the opinion of the Master of the Rolls, Lord Esher, in this case, will be found a clear statement that in England, except in cases of purely voluntary conveyances, there are no constructive frauds.

See also *Godfrey* v. *Poole*, L. R., 13 App. Cas., 503.

" For many years past the tendency has been, in England
" and in the United States, to consider the question of fraud
" as a fact for the jury under the instruction of the court."

Warner v. *Norton*, 20 Howard, 460.

In harmony with this tendency are

Cook v. *Corthell*, 11 R. I. 482, where the terms of the mortgage will be found on p. 484.

Williams v. *Briggs*, 11 R. I. 476.

Williams v. *Winsor*, 12 R. I. 9.

In *Williams* v. *Winsor*, 12 R. I., p. 12, the Court says as follows :

" While in some States a mortgage containing a power to
" sell and replace, or where the mortgagor retains possession,
" has been held to be therefore void, such has not been the
" doctrine of the courts in this State. Here, the question
" whether such a mortgage is fraudulent or not is a fact for
" the decision of the jury, upon the circumstances and evi-
" dence in the particular case."

The rule in Rhode Island seems clearly declared to the full extent of this paragraph, as early as 1859, in *Nightingale* v. *Harris*, 6 R. I. 321, where the Court said as follows, p. 329 :

" Without doubt, an assignment for the benefit of creditors

" may contain a clause so plainly indicative of the fraudulent " intent pointed at by this statute, as to carry its death-wound " upon its face; such as a gratuitous provision out of the " assigned property for the insolvent assignor or his family. " Except, however, in such glaring cases, incapable of any " just or honest explanation, we should be departing far from " the usage of well-instructed courts of any sort, and espec- " ially of Courts of Equity, if we should attempt to pronounce " upon the intent of the maker of any instrument without the " aid of all those facts relating to the subjects and objects of " his conveyance, which, by placing us in the precise point of " view from which he contemplated his act, will enable us to " ascertain what he intended by the language he used, and, " consistently with that language, why he intended it."

In *Gardner* v. *The Commercial National Bank*, 13 R. I. 155, some *dicta* in this opinion were criticised.

The criticisms were also only *dicta*, and the actual decision in *Gardner* v. *The Commercial National Bank* did not contravene the earlier case, as the opinion closed as follows, p. 176:

" The demurrer raises simply the questions, whether the " earlier assignment, taken simply by itself, without explan- " atory allegations or proofs, is to be regarded as valid."

In *Austin* v. *The Sprague Manf. Co.*, 14 R. I., 464, these two cases are explained.

Referring to *Gardner* v. *The Bank*, the court says, p. 478, that the court finally held, although no reported opinion, complainants were " entitled to prove that the discretionary " powers contained in the trust deed made to them were " consistent with an honest intent, and were not inserted in " the deed for the purpose of hindering, delaying or defraud- " ing creditors."

C.

Also a liberal policy was early established in Rhode Island in favor of conveyances based on a rule of equality among creditors.

The citations apply in terms to assignments; but the principles are broad enough to cover mortgages when their purpose is a general funding of liabilities like that at bar.

1. *Spencer* v. *Jackson*, 2 R. I. 35, decided in 1851, states at the outset that "as a matter of wise legal policy these "assignments have been favored."

The court continues that *Halsey* v. *Whitney*, 4 Mason, 206, decided in 1826, was adopted as the law of Rhode Island.

Then comes an account of *Burgess* v. *Boon*, and of *Dockray* v. *Dockray*, decided in 1830 and 1850, which cases elaborated the doctrine of *Halsey* v. *Whitney*.

The court continues as follows:

"The rules laid down in these decisions constitute the "settled law of this State."

"*We live in a mercantile and manufacturing community* "*and have no bankrupt law, and a contrary course would ruin* "*the business of the State.*"

D.

The following special phases of the local law of Rhode Island deserve to be noted:

1. By Public Statutes, 1882, Chap. 176, the ordinary right of redemption for a mortgagor is fixed at three years, and the right of the mortgagee to file a bill to foreclose is also recognized.

2. It is the general rule that the right of redemption, either of real or personal property, may be sold on execution.

Anthony v. *Shaw*, 7 R. I. 275.
De Wolf v. *Murphy*, 11 R. I. 630.

3. The equitable right of the debtor may be seized in equity and applied to the debts of nonassenting creditors.

Also it is held that an express reservation to the debtor of so much of the estate as is not required for the payment of his debts, and indeed of the proportion of the dividends which would come to dissenting creditors if they assented, is valid.

Smith v. *Millett, et als.* 11 R. I. 528, 532, and 12 R. I. 59.

E.

The instrument of November 1, 1873, *is a common law mortgage.*

On this point we need cite only:

Chafee v. *The Fourth National Bank*, 71 Me., 522.
De Wolf v. *Sprague Manf. Co.*, 49 Conn., 318, 320, and cases therein referred to.
Austin v. *Sprague Manf. Co.*, 14 R. I., p. 476.

It is sufficient for practical purposes that the nature of this instrument involves the following distinctions.

1. If it were an assignment for the benefit of creditors, the cases cited p. 23, *supra*, show that assent of creditors to it would be presumed in Rhode Island.

See also *Smith* v. *Millett*, 12 R. I. 59, 61.

Consequently, if it had been an assignment, and if any one sought to avail himself by a creditor's bill of the debtor's equity in the property assigned, it would be necessary for

him to proceed on the presumption that all creditors except himself had accepted, while in fact that presumption might prove not to be true.

But being a mortgage, it became operative only as creditors "came in under it, and only to the extent of their claims."

Austin v. *Sprague Manf. Co.*, 14 R. I. 480.

Consequently, at all times a creditor who had not assented might seize the equity of redemption, subject to the claims of creditors who had assented, thus acquiring a definite interest; because that is always certain which can be made certain.

Therefore the assenting creditor assents freely, because the non-assenting creditor may attach freely.

Another distinction arises.

2. It is, that an assignment contemplates a "winding up," and its proper purpose in law is limited accordingly.

A mortgage, both by its nature, and because also it is a purely voluntary arrangement between the debtor and each creditor who accepts, is more flexible.

3. We do not forget in this connection that the mortgage was made for the benefit of all creditors who might accept it, and that therefore, possibly under the statutes of some states, it would be subject for certain purposes to the rules governing assignments.

We believe, however, that there is no question arising on this record which renders it necessary to follow out such statutes.

We are also aware that there have been extreme cases, in which mortgages were in spirit and purpose assignments fraudulently put in the form of mortgages.

But there is no pleading nor proof in this case of a fraudu-

lent purpose of executing an assignment under the guise of a mortgage; so this does not need to be discussed.

Neither would this suggestion be admissible except in connection with an actual fraudulent intent, which we will hereafter see this case does not permit.

Also, however this may be, the practical distinctions explained under Nos. 1 and 2, necessarily arise from the mere fact that this is in form a conditional deed or mortgage.

F.

The status of the Bankrupt Laws of the United States has its force as an existing fact.

1. The Bankrupt statute of March 2, 1867, Chap. 176, Sec. 39, Statutes-at-large, Vol. 14, p. 536, was in force until June 22, 1874.

Therefore as a fact and an existing circumstance, the mortgage could not have stood, if it had met the active disapprobation of any portion of the creditors; and all parties concerned knew this.

"I asked, during the argument, why proceedings in bank-
"ruptcy had not been taken, and the only answer was, that
"it was desired to try the validity of the deed. *If this*
"*appeal were to succeed the result would be, that one creditor*
"*would be paid in full, and the other creditors entirely left out,*
"*which is exactly that which the appellants now complain of as*
"*unjust.*"

Lord Justice Giffard in

Alton v. *Harrison*, L. R. 4 Ch. App. Cas. 622, 626.

2. We also cite the statute soon after enacted, that of June 22, 1874, Chap. 390, Secs. 1 and 17, 18 Statutes-at-large, pp. 178-182, as indicating the tendency of the law.

By it the court might permit the assignee to carry on the business under its direction for nine months, if approved by a majority in value of the creditors.

3. This includes the composition section, by virtue of which the court, has time and time again approved many arrangements "coercing"— if that is the proper word — the minority of the creditors into extensions of their debts with security of various kinds, more or less good, for periods more or less long or short.

4. The Court cannot shut its eyes to this reflected light, nor to this legislative indication of the modern growth of industries, demanding of the courts, independently of any statute, a liberal recognition of arrangements like those at bar, as necessary, just, honest and therefore lawful.

G.

The deed was free from any actual fraudulent intent.

1. That there is no such intent is specifically maintained in the answers, pp. 64, 81, 82.

These cover the transfers of the Quidnick Co. stock to Mr. Chafee, p. 66.

The reasons for these separate transfers of stock are given in these answers and in this abstract, p. 4, and explained in *Austin's* case, 14 R. I. 464, 487.

So far as the parties here are concerned the mortgage itself passed the entire equitable interest, and the transfers were mere matters of form.

2. These allegations in the answers as to *bona fides* were prudent, but there are no allegations in the bill calling them out.

All the bill alleges is on p. 6, that the transfers are void,

" both by the general law and by the provisions of the Gen-
" eral Statutes of Rhode Island, Chap. 162, section 1, and of
" Public Statutes, Chap. 173, section 1."

" A mere allegation of fraud in general terms, without stat-
" ing the facts on which the charge rests, is insufficient."

Hazard v. *Griswold*, 21 Fed. Rep. 178-179.

3. No fraudulent intent, even though the grantee was cognizant of it, unless he also participated in it, affects him.

Huiskamp v. *The Moline Wagon Co.*, 121 U. S. 310-319.

Emerson v. *Senter*, 118 U. S., 1, 10.

This is declared to be the law of Rhode Island.

Nichols v. *Reynolds*, 1 R. I., 30-37.

Spencer v. *Jackson*, 2 R. I., 35, 45.

4. As each creditor accepts, a separate and distinct trust in his favor, not before in existence, springs up, and he is not prejudiced by even the guilty participation of the trustee.

Brooks v. *Marbury*, 11 Wheaton, 78, 90.

Emerson v. *Senter*, 118 U. S., 1, 10.

The Spragues testify freely to their own fraudulent intentions; but there is not a line to show that any creditor, or his attorney, shared this, if it existed.

5. Nowhere does the testimony concerning the gathering at Mrs. Sprague's house the night Mr. Chafee accepted the trust, show that any actual fraudulent intent was ever brought to his knowledge He had too much else on hand.

6. The opinion at the circuit found that the facts in this case do not differ materially from *Austin* v. *The Sprague*

Manf. Co., and referred twice to the opinion in *Moulton* v. *Chafee*, 22 Fed. Rep. 26.

The pleadings and proofs in *Moulton* v. *Chafee*, are part of this record.

In *Moulton* v. *Chafee*, the court said, p. 28: "The evidence "shows that the conveyance to Chafee was made in good "faith."

Therefore, taking it all together, it is evident the court below found there was no fraudulent intent.

So in *Chafee* v. *Fourth National Bank of New York*, 71 Me. 514, 529, the court repudiated this suggestion of an actual purpose to defraud creditors, as appears in the extract, p. 51 of this brief.

In *Stafford National Bank* v. *Sprague*, 17 Fed. Rep. 784, the court, p. 792, admitted that "the motive of the debtors "and the assenting creditors was not tinged with bad faith."

7. Randolph put in much evidence indicating a claim of double motive, first to secure the funding arrangement, and second to prevent certain attachments.

On p. 3 of this abstract, we have met this latter on the facts.

But a mere desire to defeat attachments does not taint.

The cases and authorities on this point are innumerable.

Hartshorn v. *Ames*, 31 Me. 98.

Pike v. *Bacon*, 21 Me. 286.

Pickstock v. *Lyster*, 3 M. & S. 371.

Wait on Fraudulent Conveyances, 2nd edition, 21, 435.

Burrill on Assignments, 5th edition, sec. 336.

Bump on Fraudulent Conveyances, 3d edition, 187 and 396.

Brooks v. *Marbury*, 11 Wheaton, 78, 98.

Halsey v. *Whitney*, 4 Mason, 206.

H.

There being no actual fraudulent intent, does the law declare this honest instrument constructively void?

1. The rule in *Robinson* v. *Elliott*, 22 Wallace, 523, affirmed in *Means* v. *Dowd*, 128 U. S. 273, is that the creditor must take care in making his contract, that "it does not contain "provisions of no advantage to him, but which benefit the "debtor and were designed to do so and are injurious to other "creditors;" and also that the law "will not allow the creditor to make use of his debt for any other purpose than his own indemnity."

It is not enough that the instrument contains provisions which benefit the debtor, but they must also be of no advantage to the creditor.

The creditor is allowed to make sure of his own indemnity.

How is it to be determined what provisions are of no advantage to the creditor and unduly benefit the debtor?

"All the facts surrounding the transaction are to be taken "into account collectively."

Sleeper v. *Chapman*, 121 Mass. 404-409.

In other words the whole is to be searched, and proper weight given to surrounding circumstances, all as was done with reference to this mortgage in *Austin* v. *the Sprague Manf. Co.* This is the settled policy of Rhode Island, explained in the case last named and established by the cases already cited in this brief, pp. 40-43.

Some of those circumstances were as follows:

By reason of a panic so universal that everybody takes cognizance of it, the values of manufacturing property were nominal.

The complicated nature of the assets appears from the report of the committee, p. 449 to 455.

The effect of ceasing to operate, is well explained on p. 457 and 464 and elsewhere.

The assent of the mass of creditors, involving so many and so large an amount, and the fact that none actively dissented at the time, form a cotemporaneous practical judgment in favor of the justice and wisdom of the arrangement.

The length of time the matter was under consideration,— in all nearly a month,— the publicity, the large interests of the members of the committee,— King alone being a creditor for $232,000, p. 459, the care taken by them in consulting eminent counsel at Boston and New York, p. 460, that the instrument was more the work of the creditors than of the debtors and that every line of it was carefully considered, carry in connection with the other circumstances a weight in its favor difficult for any court to overcome.

I.

This mortgage has been before the courts in the following cases :

Austin v. *The Sprague Manufacturing Co.*, 14 R. I. 464.

Chafee v. *Fourth National Bank*, 71 Me., 514.

De Wolf v. *The Sprague Manufacturing Co.*, 49 Conn. 282.

Stafford National Bank v. *Sprague*, 17 Fed. Rep. 784.

Chafee v. *Blatchford*, 6 Mackey's Reports, 459.

Moulton v. *Chafee*, 22 Fed. Rep. 26.

Each of the two decisions at the circuit followed substantially the court of the state in which each was rendered.

The cases in Connecticut and the District of Columbia were adverse to the mortgage, while those in Rhode Island and Maine sustained it.

In the case in the District of Columbia, p. 475, the court dismisses carelessly the case from 71 Me., saying that it did not touch the question of validity.

On the other hand, the Maine court said, p. 529.

"It is also urged that the assignment was made for the "purpose of defrauding creditors. It is a sufficient answer "to this argument to say that, in our judgment, the evidence "does not support it. The assignment appears to have been "made openly, upon consultation with the creditors, and upon "their recommendation; and we think it may well be doubted "whether a better arrangement for the creditors could now be "made, if the work should be gone over with again."

It does not appear whether or not, in the particulars now essential, the law of Connecticut is assimilated to that of Rhode Island; but the law of Maine is.

The decision in Maine was made December 20, 1880 — before this controversy was initiated.

J.

Coming to the construction of this deed with reference to alleged legal fraud, we claim especially the application of three familiar rules, namely:

1. That fraud is not to be presumed;
2. That an instrument is to be construed rather to maintain it than to destroy it; and
3. That all parts of it are to be taken together.

In the attacks on this deed all of these rules have been violated and the reverse of each pushed to extremes.

K.

This instrument was not one for winding up, but for funding.

Pp. 1 and 2 of this brief show, that at the time it was made, all parties regarded the estate as solvent.

Indeed the brief for the complainant in the circuit in this case states, p. 9, as follows:

"The estate was known to be solvent by the parties to the "instrument on both sides at the time it was pretended to "have been made, namely, Dec. 1, 1873."

The parties were known to be insolvent in one sense; they were not able to meet liabilities as they matured; but they were supposed to be solvent in another sense, that is, to have ample assets to meet them after the panic subsided.

Therefore this mortgage was made to extend and fund.

"When we look out of the trust deed, as we must, in order "to find any fact on which to base a suspicion of fraud, we "find a distinct and well-defined plan for going on with busi- "ness and paying debts. We may charge infatuation and "folly; but we cannot charge fraud."

Curtis v. *Leavitt*, 15 N. Y. 9, 129.

There are in this mortgage no provisions essentially differing from like provisions in all well drawn railroad funding mortgages throughout the United States, and in all well drawn like mortgages given by manufacturing corporations in eastern New England.

All of these provisions have been for nearly two generations in eastern New England availed of by the legal profession without the slightest doubt of security, especially ever

since the opinions of Story in *Mitchell* v. *Winslow*, 2 Story, 630, and of Judge Weston in *Brinley* v. *Spring*, 7 Me. 241, and the decision of Chief Justice Shaw in *Foster* v. *The Saco Manf. Co.*, 12 Pick. 451.

L.

1. *One ground of attack is, that the mortgage combined individual and corporate property, and individual and corporate debts.*

In *De Wolf* v. *The Sprague Manufacturing Company*, 49 Conn. 282, the court heard the bill on demurrer; and so proceeded on a hypothesis on this point, which the facts defeat.

This is conceded by Judge Shipman in *Stafford Bank* v. *Sprague*, 17 Fed. Rep. 792.

2. We also have the fact that Mary, Fanny and Amasa Sprague had no individual liabilities except as stockholders of the Sprague Manf. Co.; and no individual creditor of William Sprague or of the firm of A. & W. Sprague appears to complain.

3. And as already shown, Randolph being only a partnership creditor, had no right to complain of any detail concerning the method in which William and Amasa Sprague applied their individual property to the discharge of their individual liabilities.

4. As to corporation creditors, like Waterman, the evidence shows that all parties believed — and it is not yet disproved — that this combination gave them the benefit of a large surplus of individual assets.

5. "It is solely a question under the assignment, between "the different classes of creditors, when they come to claim

" distribution, a question with which those claiming adversely " to the assignment can have no concern."

Reed v. *Baylies*, 18 Pick. 497, 500.

6. This was considered with reference to this same mortgage in *Austin* v. *The Sprague Manf. Co.*, 14 R. I. 464; and on p. 487, the court said:

" It will be time enough to consider this matter fully when " some creditor shows that he sustains or has reasonable cause " to fear a damage on this account."

M.

The only other point made by the Supreme Court of Connecticut against this mortgage in *De Wolf* v. *The Sprague Manf. Co.*, is that appearing on p. 324.

The court says that the trustee is authorized by it to operate the mills "for a period of time limited only by the trustee's " discretion," unless one-fifth in amount of the holders of the notes issued and outstanding under the deed intervene.

A fair examination of the terms of the deed shows that this construction is not correct.

1. We refer to the rule, that the whole instrument is to be taken together.

The clause objected to, rec. p. 13. is one of three framed for the protection of the creditors; and the powers given by it are not primary and independent, but incidental to such protection.

2. The right to take possession given by this clause, in connection with the clause preceeding it providing that the mortgagor shall retain possession until default, leaves the matter as at the common law in New England, that is to say,

the mortgagee — in this case the trustee — under the ordinary form of mortgage may take possession at his discretion.

Therefore it is clear that no complaint can be made by any person of the right reserved here for the mortgagee to take possession.

3. The mortgagee having taken possession, comes the question whether or not he may be permitted to operate the mills.

Not to permit him to operate would have been in this particular case an irreparable mischief to the property — see the testimony at various points, especially of Henry Howard, rec. pp. 457-458.

4. We will show that the Connecticut court is mistaken in its proposition that the trustee's discretion was limited only by the action of one-fifth of the secured creditors; but that this was an essential element in the court's conclusions is apparent from its general reasoning, as also from the peculiar character of the cases cited by it.

The following cited by it on p. 326, namely: *De Forrest* v. *Bacon*, 2 Conn. 633, *Kendall* v. *The New England Carpet Co*:, 13 Conn. 383, *Woodward* v. *Marshall*, 22 Pick. 468, *Foster* v. *Saco Manf., Co.*, 12 Pick. 451, *Janes* v. *Whitbread*, 11 C. B. 406, (73 E. C. L. Rep. 406), were all cases where the assignees or mortgagees were given "discretion" to continue the manufacturing for the purpose of working up stock on hand, and for that purpose to purchase new material.

Some of these cases involved assignments for the benefit of all creditors, some, mortgages of part of the property, and some, mortgages of the entire property, for the benefit of certain creditors; and yet in every case the instrument was sustained.

The mortgage in *Foster* v. *The Saco Manf. Co.*, is the

same sustained by the court in *Brinley* v. *Spring*, 7 Greenleaf's Rep. 241, where its details are fully given.

Now in all these there was a "discretion" and a possibility of loss,—indeed of an entire loss. Therefore it is evident that the point on which the Connecticut court turned was the fact that, as it understood, the discretion given the trustee under this mortgage was unlimited in time.

5. Turning again to the clause, Rec. p. 13, the words are "before default or breach as well as after."

Looking at the rules of construction already cited by us, it seems quite plain the clause had in mind taking possession and operating before default and not after.

The sequence of the words is to be noticed. The word "enter" immediately follows the word "after."

The scrivener who drew the mortgage knew, of course, that after default the trustee had a right to enter, and evidently supposed that after default the trustee, being also a mortgagee, and not a mere trustee for the purpose of winding up the property, might with propriety according to the necessity of circumstances temporarily operate the property.

"There are circumstances where a trustee must exercise "the discretionary powers of an absolute owner, otherwise "great loss might happen to the estate."

Perry on Trusts, Sec. 476.

"And so it is a rule of equity that a trustee may safely do "that, without a decree of the court, which the court, on a case "made, would order or decree him to do."

Idem.

Woodward v. *Marshall*, 22 Pick. 475.

Burrill on Assignments, Fifth Edition, Sec. 396.

Therefore the scrivener understanding that the trustee after default could enter and, under some circumstances, operate, made provision that he might do so before default, "as well as after," that is to say, "in the same manner as "after."

6. The position of the Connecticut court that the clause requiring the action of one-fifth is not concurrent, is incorrect and indeed startling.

Probably very few well drawn mortgages intended to secure a large number of persons, made within the last twenty-five years, omit to contain this clause almost *totidem verbis.*

In *First National Ins. Co.* v. *Salisbury*, (130 Mass. p. 303,) the Court held that this was merely cumulative to the general right to foreclose.

We affirm that, from the decision of Justice Curtis in 1857 in *Hall* v. *the Sullivan Railroad Co.*, (21 Law Reporter, p. 138,) to the present time, no case to the contrary can be found in the jurisprudence of the United States.

These cases are so numerous that we will not burden with a citation of them, referring only to one case by way of example, *Alexander* v. *The Central Railroad of Iowa*, 3 Dillon, p. 487, where the Court ruled as follows, p. 489:

"The authority in the deed of trust to the trustee, on de-
"fault of the payment of interest, and upon the written re-
"quest of a majority of the bondholders to take possession
"of the road, to operate it and receive its income, and on
"three month's notice to sell the same, and divide the pro-
"ceeds of the sale *pro rata* among the bondholders, is a
"cumulative remedy for the benefit of mortgage creditors,
"and does not exclude their right to resort to the judicial
"tribunals for a foreclosure."

In *Chicago & Vincennes R. R. Co.*, v. *Fosdick*, 106 U. S. 47, there were similar clauses; but, concerning the right to foreclose, the court said, p. 68, as follows:

"This right belongs to each bondholder separately, and its "exercise is not dependent upon the co-operation or consent "of any others, or of the trustees. It is properly and strictly "enforceable by, and in the name of, the latter, but, if nec- "essary, may be prosecuted without and even against them. "It follows from the nature of the security, and arises upon "its face, unless restrained by its terms."

The same point is ruled on this particular mortgage in *Austin* v. *The Sprague Manf. Co.*, already cited, on p. 485 as follows:

"Suppose then the trustee and one-fifth of the creditors "should take no steps for a sale after default, but allow the "business to go on, endangering the margin that might "remain for non-assenting creditors, what could the latter "do? Clearly they could apply to the court for an order of "sale."

7. The Connecticut court relies strenuously on *Owen* v. *Body*, 5 A. & E. 28, (31 E. C. L. Rep. 254) and the cases which flow out of it.

It is not necessary for us to consider how far this case is shaken or strengthened by the later cases of *Janes* v. *Whitbread*, 11 C. B. 406 (73 E. C. L. Rep. 406,) *Coates* v. *Williams*, 7 Exch. 205, *Spencer* v. *Slater*, 4 Q. B. D. 13, *Cox* v. *Hickman*, 8 House of Lords Cases, 268, *Boldero* v. *The London Co.*, 5 Exch. Div. 47, *Bodley* v. *Goodrich*, 7 How. 276.

So far as *Owen* v. *Body*, was based on the notion that these arrangements involved the creditors as possible partners, it was fully overruled in England in *Cox* v. *Hickman*, *ante*, and

is not the law of Rhode Island, where the court, as early as 1880, approved *Cox* v. *Hickman*.

Boston Smelting Co., v. *Smith*, 13 R. I. 27-32.

There may be assignments of the whole or a part of a man's estate for the benefit of the whole or a part of his creditors, and there may be mortgages of the whole for the benefit of all or a part of his creditors, or mortgages of a part for the benefit of one or the other; and cases holding that either of these four classes are fraudulent are not always interchangeable for the other classes.

This the Connecticut court entirely overlooked.

When we come to assignments only, the distinction is so broad that cases annulling assignments on the ground of fraud, might as well be said to annul them on the ground that the provisions of the assignments were inconsistent with their nature and purpose, leaving them like deeds of conveyance which by their terms do not convey.

Indeed the rule is laid down in Wait on Fraudulent Conveyances, second edition, sec. 330, so strongly as in the following language:

"It may be observed that an assignment, drawn precisely "as it ought to be, will not undertake to speak to the assig- "nee in regard to his duties under the trust."

8. Also we maintain that there is no such unlimited discretion vested in the trustee as the Connecticut court supposes.

In *Halsey* v. *Whitney*, 4 Mason, 206-221, Judge Story states the pros and cons upon this matter of vesting the trustee with discretion in complicated affairs, and sustains for it a large margin.

In this case the discretion reached certain matters of

admitting or shutting out creditors, and was, on the whole, a large one.

Judge Story said it was objected that this power "is so susceptible of abuse, that it is unreasonable and unjust, and "therefore fraudulent in point of law."

But, he observed: "The object of this power is obviously "to carry into effect, and not to subvert, the general intent of "the assignment."

Also, he said: "But the trustee must be presumed to act "honestly, and does, in fact, covenant with all the parties for "a faithful performance of his duties. A clause reposing "confidence in him in discharge of his duties can surely not "be deemed fraudulent from that fact alone. If the selected "trustee were notoriously insolvent, or of bad character "(which is not pretended here), such a clause might be "deemed an auxiliary ground for presumptive fraud. But a "power of this nature, simply because it may be abused, is "not to be deemed unreasonable, or fraudulent."

These expressions of confidence in the trustee are limited by the law, as was that in *Loring* v. *Marsh*, 6 Wallace, 337, which, among other things in reference to the estate, authorized the trustee "to manage, invest and reinvest the same "*according to their best discretion.*"

Perry on Trusts, Sec. 508, distributes into classes the various provisions vesting or apparently vesting discretion in trustees, and the third class the author describes as follows:

"Where the discretion applies to some ministerial act con"nected with the estate, such as powers of leasing, selling, "appointing new trustees, felling timber, and the like. This "class of powers is much more under the control of courts, "than powers depending upon the exercise of opinion and "judgment. The court can enter into all matters in relation

" to those things that are beneficial to the estate, and into the " motives of the trustees for exercising or refusing to exercise " these powers; and the courts will not allow the trustees to " exercise their powers in this respect in an arbitrary or capri- " cious manner."

Our proposition is well put in *Austin* v. *The Sprague Manf. Co.*, 14 R. I., at the middle and foot of p. 483, and foot of p. 488.

Especially on p. 485, referring to all these provisions in the mortgage treated under this and other sub-divisions the court says: " *We regard the limitations as reasonable and* " *proper and think that under them the trustee took no greater* " *powers than the court in view of the facts would have said he* " *ought to be allowed to exercise without reference to the deed.*

" *After default there is* ***no*** *special discretionary power* " ***which*** *permits the trustee to carry on the business at his own* " *will.*"

9. Turning again to *Robinson* v. *Elliott*, 22 Wallace, 523, we inquire whether the provision is one of " no advantage to " the creditors," and " which yet benefits the debtor," and " was designed to do so?"

Admitting that all these expressions are to be limited by the rule of reasonableness, we claim that these provisions and all the other provisions which we may hereafter touch upon are within it.

a. It is to be noticed, Rec. p. 15, that the trustee by express implication, is made " accountable for any loss " arising from " his own neglect or default."

b. It would not be unreasonable to require the concurrence of one-fifth of the creditors in almost any step that might be taken. A provision of this sort is not uncommon, and the proposition needs no argumentation.

c. It is not unreasonable to invest the trustee primarily with discretion, and not, as said in the citation already made from Perry on Trusts, Sec. 476, force upon him the alternative of applying to the court, which "may be attended "with considerable or disproportionate expense, and perhaps "delay, so that the opportunity is gone and lost forever."

d. In short, with this great and varied property, it was not unreasonable to give play for meeting emergencies in every direction.

e. Also the liberality of the Rhode Island court in this direction is illustrated by *Waldron* v. *Wilcox*, 13 R. I. 518; where, as against a garnisheeing creditor the court maintained an assignment, although it provided, p. 519, that the assignee might raise money from the estate by selling or mortgaging, either in whole or in parcels, either by public auction or private sale, at the discretion of the assignee, with liberty to buy in the premises offered for sale or any part thereof, and to resell the premises without being answerable for any loss consequent thereupon.

f. In *Austin* v. *The Sprague Mfg. Co. supra*, the court on pp. 485 and 488 cover this entire question of reasonableness in the following words:

"As already stated, considering the instrument a mort-
"gage and a preference, with the terms of which, therefore,
"if not illegal, non-assenting creditors can find no fault,
"the circumstances of its inception and the nature and extent
"of the estate, we regard the limitations as reasonable and
"proper, and think that under them, the trustee took no
"greater powers than the Court, in view of the facts, would
"have said he ought to be allowed to exercise, without refer-
"ence to the deed."

* * * * * * * *

"The other ground of objection to the mortgage in the "opinion is that it empowered the trustee to run the mills at "the expense of the estate. The court make no account of "the fact that, if he had to take possession of the property, "sure loss would follow from idleness, unless he could have "such authority. Under the mortgage 'the diligence of the "provident man is the measure of the trustee's duty,' for he "is held accountable for any loss which happens from his "neglect or default. It could not be expected that a trustee "would take all the chance of loss from business upon him-"self, and unless he can be thus authorized to run the mills "they cannot be run at all. It would be a harsh rule of law "that would forbid to creditors a choice between possible and "certain loss; between the advantage that would arise from "the sale of a going concern and the disadvantage that might "come from unsuccessful business."

10. What we have already cited under No. 5, p. 56 of this brief, growing especially out of the sequence by which the word "enter" follows in this clause the word "after" and what we have also said furthur under No. 6, p. 57, to the effect that the provision relative to one-fifth of the creditors is cumulative, meet the claim that there is anything which expressly provides for the indefinite operation of the mills.

In addition to this we have some positive expressions indicating that there was no such intention as claimed by the Connecticut Court.

For instance, rec. p. 11, appears the closing part of the second recital describing the funding notes as running three years; and then comes the last recital, that it is for the best interests of the creditors "that the business of the mills and "print works shall in the *meantime* be continued."

So again is the provision, rec. p. 13, that the trustees may

from time to time, even before default, sell any portion of the property, holding the purchase money for the purposes afterwards declared.

Again, the stringent provision in behalf of the creditors at the foot of rec. p. 15, that even the profits accruing before default, while the property is being operated by the company, shall be paid over to the trustees for the purposes of the trust.

Also the authorization to operate or to close the mills was according as the trustee "should deem for the best interests of "the creditors," not permitting the consideration of any other interest.

11. We desire again, in connection with this important branch of this case, to say, that we have discussed it as we do all the other points, still reserving the right to maintain that, even if the mortgage might be subject in other states to be invalidated by the criticisms made in those states, and even if their courts have in those respects correctly construed its terms, yet under the established law of Rhode Island, pp. 40 to 42 of this brief, which admits the surrounding circumstances to support the integrity of the transaction, the decisions of their other courts are not applicable to a deed made in Rhode Island in a suit coming from that district.

N.

The only objection made to this mortgage by Judge Shipman in *Stafford National Bank* v. *Sprague*, 17 Fed. Rep. 784, appears on p. 791, and is a repetition of that of the Connecticut Court last considered, barring only the fact that Judge Shipman has misconstrued the assignment of April 6, 1874, and also sought to invalidate the mortgage by combining with it a subsequent transaction, that is, this assignment, and treating the two as fraudulent and void "taken together."

We may hereafter consider the character of this assignment; but for the present we say, that, whatever the facts may have shown in the case as made up before Judge Shipman, the facts in the case at bar entirely preclude thus combining the two.

The evidence here shows that the assignment was made at the suggestion of certain creditors, among others, the National Bank of Commerce of Providence, for a clearly honest purpose, rec. pp. 354, 413, 434, 437, and 478.

It is to be presumed that the creditors, none of whom are named in the record except the Bank of Commerce, on whose request this assignment was made, assented to it and became parties to it.

But there is not a particle of evidence in the record who these creditors were, except the bank named, what creditors had at that time assented to the mortgage under discussion, or had not assented to it, or whether any of the creditors who assented to the mortgage, afterwards expressly assented to the assignment.

Of course, while under the law of Rhode Island, it may be said that the assent of creditors to an assignment is ordinarily to be presumed, the law would not go to the extent of presuming an assent to a fraudulent instrument, the effect of which would be to destroy the validity of a prior mortgage on which the creditors rely.

The presumption arises from the other presumption that the trust is beneficial; but no such presumption could arise, either in law or in fact, if the effect was to be as destructive as stated by Judge Shipman, and deprive the creditor both of what he already had, and of what he is presumed to wish to acquire.

See further about this under Point IX.

O.

1. The principal objection raised by the court in *Chafee* v. *Blatchford*, 6 Mackey, 459, follows the Connecticut court and Judge Shipman.

The main discussion is on pp. 476 and 477.

At the bottom of p. 476 the court imports into the mortgage what is not there, namely: that the mortgagee shall not be responsible for any losses.

2. The expressions on pp. 476 and 477 are contradictory and confused as between themselves, and also with reference to the mortgage and the assignment.

In the paragraph near the bottom of p. 477, the provisions of the deed and mortgage are so mixed, it is difficult to say of which the court is speaking.

It says that the creditors who come in are not to have the benefit of the property, unless they consent to a delay of three years.

That apparently relates to the mortgage.

Then the court proceeds that there is a reservation for the benefit of the grantor himself, and speaks of this as in the assignment. But none appears there, and it would not harm if it did.

There is such a reservation in the mortgage, which, of course, is in accordance with the purpose and nature of such an instrument.

It is impossible from these two pages to determine whether the court is anxious for the interests of the creditors who have assented, or of those who did not.

3. Near the foot of p. 477 is an attempt to destroy the deed, because the conditions are too onerous for creditors who might desire to become parties to it.

Yet a large portion of p. 476, and part of p. 477, the

court devotes to invalidating the mortgage, because the creditors who assented have alleged stupendous advantages over those who have not assented.

These positions seem inconsistent.

The court cannot thus, janus-faced, say that both classes of creditors were defrauded, namely: those who assented and those who dissented.

4. At the foot of p. 475, the court lays down a rule which prohibits any person or corporation owning property in more than one state, from imposing a mortgage on the same.

It is hardly necessary to cite authorities to the effect that a debtor may mortgage all his property. Many cases already cited in this brief, in which the mortgage was sustained, were of that character.

In *ex parte* Games, 12 Chanc. Div. 314, it was held that a debtor might mortgage the whole of his property to secure a single creditor.

This is probably a criticism never before made on any mortgage in any court of law or equity. It must have been made in entire forgetfulness of the fact that a debtor's equity in property, no matter in how many districts, so long as it is a single one, can always be reached by the court at his domicile in a single bill.

This is the principle underlying *Muller* v. *Dows*, 94 U. S. 444, and subsequently followed by so many other courts, and in so many other cases, and which principle flows from the rule that equity "acts *in personam* and not *in rem*."

Pomeroy's Equity Jurisprudence, Vol. 1, Sec. xii., p. 469.

P.

Criticism has been made on account of the authority of the trustee to sell before entry, at his discretion, rec. p. 13.

This also comes in order among the special provisions for the benefit of the creditors.

1. As to this matter of "discretion," we refer to this brief, pp. 59 to 61.

In view of the extended and peculiar character of this property, the creditors might well have demanded this provision as a necessity.

It is to be taken together; and if any of its terms are not in all respects satisfactory, yet the general purpose accomplished outweighs every possible disadvantage.

2. There have been all manner of fantastic decisions concerning this discretion to sell, some of which are grouped in Bump on Fraudulent Conveyances, third edition, 414-415.

In one case it was held that a discretion to sell at public auction was a badge of fraud; although this is ordinarily a fair way for trustees to sell, and private sales involve a "discretion" on their part which it is quite impossible for the courts to control.

More of these decisions are found in the same work, p. 60; where it was said that a deed of trust may allow a trustee a liberal discretion as to the time and manner of sale, and also that a provision that the property may be sold before the time stipulated for payment, if the grantor desires, does not render the deed void.

That the mere power of sale is not operative to ward off creditors, so that it affords any suggestion of a fraudulent intent, was distinctly held in *Brackett* v. *Harvey*, 91 N. Y. 214, in *Hawkins* v. *Hastings Bank*, 1 Dillon 462, and in all the cases hereafter referred to in Maine, Massachusetts and Rhode Island, where the debtor mortgagor was authorized to remain in possession, deal with and renew his stock.

In all of them sales might be made before the debts became due.

In one of these cases, namely that in Dillon, it was expressly provided that the mortgagor should sell as the attorney of the mortgagee; but in all the sales were made by his authority.

In the cases in Dillon and New York, the mortgages were sustained, because the mortgage in each case provided, as does this provision we are discussing, that the proceeds should be applied on the mortgage debt.

Every well-drawn railroad mortgage contains necessary provisions for disposition of lands and other property, liable in the course of events to become unnecessary, which provisions range over the whole field of discretion.

In *Austin* v. *The Sprague Manf. Co.*, *supra*, 476, the Court covered this ground as follows:

"While this is an unusual provision in a mortgage, we do "not think it is sufficient to change its character. It is not a "direction to sell, nor an authority to sell the whole, but 'part "or parts'; and the extent and variety of the estate mort- "gaged, as disclosed by the description, suggests that the "clause has reference to the sale of parts which it may be "found imprudent or inexpedient to keep during the term of "the mortgage. But, however this may be, the proceeds of "such a sale are to be held subject to the mortgage, so that "the provision amounts only to a permission to substitute one "form of property for another of equal value; a provision not "uncommon in mortgages of personal property."

Q.

The respondents' brief at the circuit says as follows:

"The estate was known to be solvent by the parties to the "instrument on both sides at the time it was pretended to "have been made."

Whether and how far solvency or insolvency bears upon the question of alleged fraud may well be doubted.

In *Brinley* v. *Spring*, 7 Me. 241, a case of a very complicated mortgage, the Court dwelt on the want of proof of insolvency as an essential fact in its support.

The same mortgage came before the Supreme Court of Massachusetts in *Foster* v. *The Saco Manf. Co.* 12 Pick. 451.

Having already been passed on by the Maine court, its validity on the question of fraud was not challenged in Massachusetts; but the Massachusetts court described the corporation as "absolutely insolvent" when the mortgage was made, without the slightest intimation that that would affect its validity.

In the Connecticut case, *De Wolf* v. *The Sprague Manf. Co.*, *supra*, which was heard on bill and demurrer, the Court states, p. 322, that the bill alleges that the mortgagors were "hopelessly insolvent," and the Court reasons from this as a fundamental fact.

So that, as between the plaintiff's counsel in this case and the Connecticut court, this mortgage was invalid, whether the mortgagors were solvent or insolvent.

The court in *Austin* v. *the Sprayue Manf. Co.*, *supra*, p. 481, stated the fact with exactness as follows:

"It does not appear that the Spragues knew whether they "were solvent or insolvent when the deed was executed. "They knew that they were unable to meet their indebtedness "as it matured, but, as it appears by the report of the com- "mittee of creditors, it was supposed that they could ulti- "mately pay their liabilities."

In other words, they were insolvent in the sense that they were not able to meet their liabilities as they matured, and

they were solvent in the loose sense, believing they had sufficent assets to ultimately pay in full.

This, of course, involved the sequence that, upon an immediate winding up, creditors would have received only a part of their debts ; but with reasonable delay, they might receive the whole.

So the circumstances were exactly suited to a funding arrangement.

This brings us to the question of the "sacrifice of property."

This again comes back to the rule already cited from *Robinson* v. *Elliott*, *supra*, namely : provisions of no advantage to the creditor, "but which benefit the debtor and were "designed to do so, and are injurious to other creditors, in- "validate the instrument."

Therefore, where the debtor can pay his liabilities as they mature, but with some loss of property, and an arrangement is made mainly to prevent sacrifice, it may be held invalid ; but where a prompt application of the assets would cut so deep as to deprive creditors of a part of their debts, as in the case at bar, and the arrangement to prevent a "sacrifice" is for their benefit, the fact that it may or may not ultimately enure to that of the debtor, is not important.

In Bump on Fraudulent Conveyances, third edition, p. 27, it is said that the mere intent to prevent a sacrifice is not sufficient to render a conveyance void.

The whole question was well discussed in *Austin* v *The Sprague Manf. Co. supra*, pp. 482 and 483.

An intent to prevent the sacrifice of property enters more or less, both on the part of the debtor and the part of the creditor, into every arrangement for giving security, and becomes a greater element as the necessity to prevent it is the more

imminent in order to enable the creditor to secure full payment.

In all the English cases which have been cited in which the conveyances were sustained, namely: *Janes* v. *Whitbread*, *supra*, *Coates* v. *Williams*, *supra*, *Boldero* v. *London Co.*, *supra*,— preventing sacrifice was an essential feature in each of the schemes sustained.

R.

Objection is made, because the extension was for so long a period as three years.

In view of the fact that, upon default at the expiration of the three years the mortgage secured the creditors the right to an immediate foreclosure and winding up of the property by sale, the whole delay is no longer than would have existed, if an ordinary mortgage had been given to one or more creditors for debts, made payable on demand, but without a power of sale.

Under the laws of many New England States, including that of Rhode Island, the ordinary course of strict foreclosure is over a period of three years.

A very large portion of this property was in Maine, where, except for the power of sale, there was then no method of foreclosing in less time than three years.

Independently of this the question arises, whether it was an unreasonable time. In other words, to go back again to the principle of *Robinson* v. *Elliott*, *supra*, was this for the benefit of the debtors, and not for the benefit of the creditors?

Looking at the general commercial condition at that time, the nature and extent of the property, and the consequent necessity on each account for ample time to realize, the period seems reasonable.

But upon a question of this sort, in which circumstances entered so largely, good faith being conceded, the burden is upon those who attack the instrument to show clearly that it was unreasonable, and not on us to show that it was reasonable.

On this point of time the decisions mainly relate to assignments for the benefit of creditors.

In their attempts to lay down arbitrary rules independently of circumstances of the case, the decisions have been very fantastic.

In Bump on Fraudulent Conveyances, third edition, p. 409, referring to such assignments and the time fixed therein for the distribution of assets, the author says that a postponement for eight months and twelve months has been held good, and for more than a year considered bad — a very unphilosophical distinction.

The author's notes show, with reference to the time for assenting to the assignment, that one year was deemed reasonable in one case, twenty months was allowed in another, and in another thirty days was deemed unreasonable.

The same work, p. 60, referring to mortgages says, the deed of trust may allow a liberal discretion to the trustee, both as to the time and manner of making the sale, and, if a debtor does not retain posession of the property, a delay of three years may be allowed.

Pp. 46 and 47, the author says : " The time which a mort-
" gage has to run is a circumstance to be taken into consider-
" ation in determining the fairness of the transaction."

The policy of New England has been to secure the debtor by statute a right to redeem running over a long period of years.

In *Mitchell* v. *Winslow*, 2 Story, 630, a mortgage giving the creditors an extension of four years was sustained.

The law seems to be well settled in Rhode Island that the length of time which may be permitted is dependent entirely upon circumstances.

In *Halsey* v. *Whitney*, 4 Mason, 206, the Court, p. 255, said:

"In all cases of this nature a reasonable time must be "allowed for creditors to come in under any assignment. "What is reasonable time is a matter dependent upon the "reasonable circumstances of each case."

We have already shown that *Halsey* v. *Whitney*, was recognized bodily as the law of Rhode Island in *Spencer* v. *Jackson*, 2 R. I. 35.

In *Gardner* v. *Commercial National Bank*, 13 R. I. 155, decided in December, 1880, the Court, p. 170, with reference to the delay permissible in closing out an assignment, and having evident reference to the time specified in it, said:

"What the limit is depends of course on what is reason-"able, considering the character and circumstances of the "property assigned."

Halsey v. *Whitney* and *Gardner* v. *Commercial Bank* relate strictly to assignments, where, of course, the law is more rigid than with reference to mortgages.

On this point the Court in *Austin* v. *The Sprague Manf. Co.*, *supra*, said, p. 483:

"In view of the amount, variety and character of the prop-"erty, scattered through many towns and states, we do not "consider three years an unreasonable time for liquidation "and sale."

S.

The next ground of complaint is that the mortgagors were, by the terms of the deed, permitted to operate the property.

Under all the objections, neither the mortgagors nor the mortgagees could lawfully operate this property, and it was necessary to consent that it should " rot at the wharf " or the mortgage would necessarily be fraudulent.

1. Even in New England, where the fee vests in the mortgagee, that the mortgagor remains in possession and enjoyment of the property, raises no presumption of fraud.

Robinson v. *Elliott*, 22 Wallace, 513, 523 and 524.

Indeed, with reference to chattels, the registration acts which exist in all the New England States, distinctly make registration a substitute for change of possesion.

Idem, p. 523.

2. It is claimed that *Robinson* v. *Elliott*, 22 Wallace, 513, and *Means* v. *Dowd*, 128 U. S. 273. apply.

Independently of this, there are broad distinctions between the mortgages in those cases and this at bar.

There was sufficient in those cases to have enabled the Court to set aside the mortgage on the ground of actual fraudulent intent. Indeed, the Court found in each case that there was such intent and mutual confidence, sufficient of itself to undermine the transaction.

But on the matter of constructive fraud the essential distinctions between the case at bar and those are as follows :

a. In each the provisions of the mortgage were such that it might run on for an indefinite period, renewals being provided for.

b. The Court found that, by the nature of the mortgages, the mortgagor was permitted for an indefinite period to apply the property to his own use.

That the Court relied on these distinctions appears as follows :

In *Robinson* v. *Elliott*, p. 524, the opinion said: "We "are not prepared to say that a mortgage under the Indiana "statute would not be sustained, which allows a stock of "goods to be retained by the mortgagor and sold by him at "retail for the express purpose of applying the proceeds to "the payment of the mortgage debt."

Again, on the same page: "Instead of the mortgage be- "ing directed solely to the *bona fide* security of the debts then "existing and their payment at maturity, it is based on the "idea that they can be indefinitely prolonged."

Again, at the foot of p. 525: "Whatever may have been the "motive which actuated the parties to this instrument, it is "manifest that the necessary result of what they did do was to "allow the mortgagors, under cover of the mortgage, to sell "the goods *as their own* and appropriate the proceeds *to their* "*own purposes*, and this too *for an indefinite length of time*."

So in *Means* v. *Dowd*, at the top of p. 282:

"Any instrument which secures to the assignor an interest "in or an unlimited control over the property conveyed, and "which has the effect of hindering or delaying creditors, is "void as being a fraud on those creditors."

P. 283: "It" (that is, the mortgage deed), "also contained "a provision for the renewal of these notes without limitation "as to time."

And again, p. 284: "The case before us is almost precisely "like that of *Robinson* v. *Elliott*, 22 Wall. 513."

So on p. 287: "The instrument now under consideration, in "the opinion of the Court, contains all the elements denounced "in the case above quoted of *Robinson* v. *Elliott*, as proof of "constructive fraud."

The conveyance under consideration in *Means* v. *Dowd* was exceedingly obnoxious.

It was so contrived that, while it nominally provided for a distribution of the residue of the property among general creditors, the distribution was indefinitely postponed by the reason that a preference was given, not merely for existing endorsements of Davidson and Dowd, but for endorsements which might be made by them, or either of them, for an indefinite period in the future.

That the Court did not intend to adopt any iron rule which should prevent reasonably adjusting the conditions of mortgages to peculiar circumstances, appears from the citation already made by us from *Robinson* v. *Elliott*, p. 523, laying down as the fundamental doctrine that "the creditor must "take care in making his contract that it does not contain "provisions of no advantage to him, but which benefit the "debtor, were designed to do so, and are injurious to other "creditors."

That the Court relied on the peculiarities to which we have referred was understood at the circuit in the following cases :

In *Miller* v. *Jones*, 15 N. B. R., where the opinion was delivered by Justice Strong, who concurred in *Robinson* v. *Elliott*, he explained this case and sustained the mortgage then at bar, making, among other things, the distinction that there was in the latter "no stipulation that the mortgagors "might sell or dispose of the chattels mortgaged for their "own use or for any purpose at all."

So in a case in the district of Indiana, *Overman* v. *Quick*, 8 Bissell, 134, decided in 1878, Judge Gresham refers to the case of *Robinson* v. *Elliott* as one in which the proceeds were "not to be applied on the mortgage debt," but "the goods "were to be sold for the benefit of the mortgagor."

In the case before Judge Gresham there was a parol agreement accompanying the mortgage, that the mortgagor should

have possession and sell the goods in the usual course of his retail business and apply the proceeds to the payment of mortgage debt; and the mortgage was sustained.

So in a case in the southern district of Iowa, *Maish* v. *Bird*, 22 Fed. Rep. 576, the mortgage provided that the creditor should retain possession and dispose of the goods in the ordinary course of trade, from time to time adding to the stock; and the Court distinguished it from that in *Robinson* v. *Elliott*, and held that it was not void.

In *Morse* v. *Riblet*, 22 Fed. Rep. 501, in one of the districts in Michigan, the Court refused to follow *Robinson* v. *Elliott*, holding that it was not the law for that state.

And likewise in *Brett* v. *Carter*, 2 Lowell, 458, the Court also refused to follow the same case, because it was not the law for the State of Massschusetts.

The real point of *Robinson* v. *Elliott* and *Means* v. *Dowd* seems to be expressed in the following extract from May on Fraudulent Conveyances, approved by Wait on Fraudulent Conveyances, second edition, Sec. 353:

"The rule seems to be that where there is an absolute conveyance, and the grantor remains in possession in such a way as to be able to use the goods as his own, it was always void against creditors even though made on valuable consideration."

In *Means* v. *Dowd* the cases especially relied on are from the New York Court of Appeals.

But, as we think, in accordance with the special distinctions made in the two cases in this Court, it has been held in New York four times by the Court of Appeals, the last time in *Brackett* v. *Harvey*, 91 N. Y. 214, that a mortgage is not rendered void by a provision authorizing the creditor to sell the mortgaged property, apply a part of the proceeds towards

renewing the stock, the renewals to be covered by the mortgage, and the balance towards the payment of a mortgage debt.

The Court says, p. 220, that the liberty to sell and apply the proceeds to the debt was the principal thing authorized, and that the privilege to replenish was only incidental and subsidiary.

The same idea is expressed in Bump on Fraudulent Conveyances, third edition, 129, as follows:

"Perishable articles, however, may be consumed when it is "a benefit for the mortgagee rather than a benefit for the "debtor; as, for instance, in the improvement, support or sus- "tenance of other property enumerated in the mortgage."

A homely illustration of the distinctions made in *Robinson* v. *Elliott*, and *Means* v. *Dowd*, as shown by the cases at the circuit and in New York and the citations from Wait and Bump, would be that, in the case of a mortgage, otherwise *bona fide*, of a farm, with stock, farming tools, hay and grain upon it, the use of the farming tools and stock, the running of the dairy, the application of the hay and grain to feeding stock, of the seed corn and vegetables for planting, and the sale and consumption of so much as might be prudently needed for the daily support of the family of the debtor, all of whom might be engaged in operating the farm, are necessary for the maintenance of the principal estate, that is, the farm itself.

The analogy between this supposed case and the case at bar, where the mills themselves were the essential element and where the stock in process was, of course, but a small percentage of all the property mortgaged, and for aught that appears in the case may have been of unusually little value,—is philosophically exact.

There is nothing in this mortgage which in terms authorizes the mortgagor to use the personal property covered by it in operating the mills.

Some courts have endeavored to avoid the application of *Robinson* v. *Elliott*, and *Means* v. *Dowd* by this fanciful distinction, which we will not, however, attempt; because we do not regard it as fair or honest.

Rec. p. 13, the mortgage directed that the trustee should, until sale or entry after default, permit the mortgagor "to "retain the possession and use of the granted premises."

And, at the foot of p. 15, the mortgagors covenant that the profits which accrue in the business of manufacturing shall from time to time be paid over to the trustee to be held and applied as other trust moneys.

We cannot resist the fair implication from these provisions that, until default or sale, the mortgagors were to remain in possession, and use and consume the personal property covered by the mortgage for the purpose of operation.

But we say, giving *Robinson* v. *Elliott* and *Means* v. *Dowd* their full effect, especially viewing them in the light of the other cases and authorities we have cited in connection with them, that there was no contrivance in the mortgage at bar by which the mortgagors should remain in possession for an unlimited time, that it was provided that the proceeds of operation should be applied to the payment of the debts secured by the mortgage, and that therefore in accordance especially with *Brackett* v. *Harvey*, *ante*, the security and payment of the debt was the principal thing sought by the mortgage, while the use and consumption of personal property was only incidental thereto, we think the case at bar is not only distinguished from the conveyances in *Robinson* v. *Elliott* and *Means*

v. *Dowd*, but clearly comes within the exceptions expresssly stated by the court in each of those cases.

3. While the practical result reached in *Robinson* v. *Elliott* and *Means* v. *Dowd* on the actual facts of each case, in connection with the peculiarities of the instruments of conveyance, would probably be sustained in the Eastern New England States, as was done substantially in *Bernard* v. *The Barney Co.*, 147 Mass. 356, where a somewhat similar state of affairs was regarded sufficient to sustain as a finding of fact that the real purpose was not to secure, but to prevent attachment, yet those cases, as commonly understood, are not the law of either of those states.

Especially in Rhode Island, the courts by decisions cited by us in this brief, pp. 40 to 42, come in substance to the following citations from Bump on Fraudulent Conveyances, third edition, p. 69 :

" In seeking to catch rogues the law ought not to ensnare " honest men. It may become so zealous against fraud as to " restrain the free action of honesty, a result which would be " most disastrous."

* * * * * * *

" No one can glance at the confused mass of authorities " upon this subject without perceiving that, what was intended " as a safe and easy guide to the detection and suppression " of frauds, has only led to an endless maze of disputation."

We do not assume to say that there are no constructive frauds in Rhode Island, nor that in that state an instrument may not be so framed as to be of necessity fraudulent, but only, that the whole line of decisions lean with great weight against the multiplication of constructive frauds, and that no application of the Statute of Frauds can be made in that state in the manner as ordinarily understood to have been applied

in *Robinson* v. *Elliott*, and *Means* v. *Dowd*, nor in any manner analogous thereto.

On the other hand, the guiding rule is as stated in the extract from Bump on Fraudulent Conveyances in *Austin* v. *The Sprague Manufacturing Co.*, *ante*, p. 479, as follows :

" In the construction of written instruments, the existence " of fraud is a question of fact whenever their terms or stipu- " lations are by *possibility compatible with good faith* and have " upon their face the essential elements of a legal contract."

We expressly call attention to the fact that none of the rules which we mention as to the law of Rhode Island were for the first time announced in *Austin* v. *The Sprague Manufacturing Co.*, *supra*, that is, after Randolph and Waterman initiated their proceedings against this mortgage, but as shown in this brief, pp. 40 to 42, they were settled as such law before that time.

4. We affirm without hesitation that for nearly two generations,— indeed, since the decision of the Supreme Court of Maine in 1831, in *Brinley* v. *Spring*, 7 Greenleaf, 241, and that of Story, in 1842, in *Mitchell* v. *Winslow*, 2 Story, 630,— it has been the recognized law of Maine, Massachusetts and Rhode Island that a mortgage duly registered according to statute, either of chattels alone, or of real estate combined with chattels, securing payment of a debt at a definite time, providing that the mortgagor shall meanwhile remain in possession, run the mill (if it is a mill), or carry on his business as a trader, if he was a trader, and either applying the proceeds upon the debt, or, if not so doing, keeping good by renewals, is not only a lawful, but a beneficial method of security; and the legal profession in all three states have been constantly drafting such mortgages without hesitation or trepidation.

In Maine and Massachusetts there are at least a score of

cases where mortgages of this class have come before the courts upon the question of the application of the rule of *Holroyd* v. *Marshall*, 10 House of Lords cases, 191, and analogous questions.

The courts in the two states have been very much at variance how far the additions would be covered at law or in equity; but the entire discussion in all the cases assumes the truth of the proposition which we make.

The law in Maine has been laid down so broadly that the question of fraud is one of actual intent. It would be useless in Maine to attack such a mortgage, if honestly made.

In Massachusetts in *Fletcher* v. *Powers*, 131 Mass. 333-334, decided in 1831, the court said as follows:

"The third exception of the defendants was to the refusal "of the court to rule that the plaintiffs' mortgage was void "because it contained a power to the mortgagor to sell the "goods in the regular course of his trade. This is, not now "an open question in this Commonwealth, it having been re- "peatedly held that such a power given to the mortgagor "does not *per se* avoid the mortgage, but is at most only evi- "dence of a fraudulent purpose, to be submitted to the jury."

And in Rhode Island, in *Williams* v. *Winsor*, 12 R. I. 9, decided in 1877, *Robinson* v. *Elliott* having been cited in the argument, we find, p. 12, the declaration found in this brief, p. 40.

The terms of the mortgage in the latter case are fully set out in *Williams* v. *Briggs*, 11 R. I. 476.

It covered the tools, fixtures and stock in trade for the manufacture of carriages, and also the carriages made or in process of manufacture, and everything purchased by the mortgagor to replace or renew, and contained quite as much as can be found in the case at bar to indicate that the chat-

tels were to be consumed in carrying on the business, and with no distinct provision that the proceeds of the business should be applied on the mortgage debts.

IX. Assignments of April 6, 1874.

1. The assignments of April 6, 1874, were made by Amasa Sprague, William Sprague, A. & W. Sprague, and the A. & W. Sprague Manufacturing Co., and appear pp. 71 to 77.

There were none from either Fanny Sprague or Mary Sprague.

These assignments cover all stock claimed in this case except 601 shares belonging to Mary Sprague and 802 shares to Fanny Sprague, making total of 1403 shares, much less than a majority.

They cover all the stock taken on the Randolph execution; so that, if the proceedings on the Waterman execution against Mary and Fanny Sprague are void, as they seem to be according to *Bank* v. *Francklyn*, 120 U. S., p. 747, complainant can clearly have no title whatever.

2. As already shown on this brief, p. 64-5, this assignment and the mortgage do not merge under the proofs in this case.

What portion of the creditors assented to the assignment does not appear.

If, however, the mortgage is fraudulent and so invalid, and the assignment valid, then according to the law of Rhode Island all the creditors who assented to the mortgage are presumed to have assented to this assignment; as such an assent would be beneficial to them.

If, however, the assignment is invalid, but the mortgage valid, we have already shown that the former cannot be set up as part of the same transaction with the mortgage for the purpose of destroying it.

The trusts and powers of these assignments (rec. pp. 71-78) are all in the same terms, so we refer only to one of them, rec. p. 72;

The property conveyed includes all property of the assignor, not exempt from attachment by law, with *habendum* to the assignee "in trust, to sell the same at public or private sale "and convert the same into money, and the proceeds thereof "to apply—

"First. To the payment in full, if sufficient, otherwise "ratably" of all claims brought in and extended under the mortgage of Nov. 1, 1873;

"Secondly. The residue of said proceeds to apply in full, if "sufficient, otherwise ratably, to the payment of all our other "creditors."

No discretion is vested in the trustee, except "to act faith- "fully for the interest of the creditors and so as to obtain as "prompt a settlement of their claims as practicable, and for "that purpose he shall sell or dispose of any and all portions "of the property" * * * * * "from time to time, as "soon as reasonably may be, consulting the best interests of "the creditors in making such sales and disposition, to the "end that he may pay and discharge in full, if the property be "sufficient, otherwise ratably, the obligations to our creditors "within a reasonable time; and the said trustee is further "authorized to run said mills or either or any of them or to "allow the grantor to run the same or any part thereof, *if for* "*the best interests of the creditors*, the profits of the same being "receivable by the aforesaid grantee for the purposes afore- "said."

Of course a fair construction of this whole provision limits this authority to run the mills so as to be purely incidental and as only *ad interim*, pending sale.

3. Then comes the provision so much criticised, that the trustee shall not be "liable personally for the expenses or "losses arising therefrom; but the same shall be chargeable "to the trust fund vested in him."

On every fair rule of construction this is controlled by the preceding clause, that it is the duty of the trustee to act faithfully for the interests of the creditors, which duty and its consequent liabilities trustee accepts and covenants to perform at the close of the instrument.

The purely incidental character of the clause is plain from the fact that it provides for protecting the assignee against expenses as well as losses.

It is not uncommon to find clauses in instruments of this character, which are only a declaration of the duties and rights existing at law.

For example, in *Jessup* v. *Hulse*, 21 N. Y. 168, the assignment contained the following clause:

"To sell, dispose of and convey the said real estate and "personal property, at such time or times, and in such man-"ner, as shall be most conducive to the interests of the credi-"tors of the said party of the first part, and convert the "same into money, as soon as may be consistent with the "interests of said creditors."

This was said by the court to be a mere superfluous statement of what the law would require.

4. The provisions concerning sale are also the usual provisions with the obligation to protect the interests of the creditors strongly impressed on them.

We have already seen in *Hammond* v. *Stanton*, 4 R. I. 65–76, that in Rhode Island even provisions which in the letter give a large discretion to the trustee as to the time and manner of sale, will be controlled by the Court of Equity when called on.

But there is nothing in this instrument which relieves the trustee from acting according to "the best interests of the "creditors" in making sales and other disposition of the property.

This part of the deed, and in fact every other part carefully excludes any expression which vests any power at the mere "discretion" of the trustee, or any which would interfere with the control of the equity courts over the entire execution of the trusts.

5. The expressions appearing in *De Wolf* v. *The Sprague Manf. Co.*, 49 Conn. 325, that under this instrument a trustee may run the mills so long "as he shall deem it" etc., is an absolute invention and nowhere appears in the assignment or can be made up from any expressions in it.

And all the cases following that expression cited by the Connecticut court with reference to instruments which expressly vest a "discretion" in the trustee, are absolutely inapplicable to this at bar.

6. Barring the repeated expressions constraining the trustee to act promptly and faithfully for the interest of the creditors in winding up the property, which appear in these assignments, they might be supposed to have been framed on those in *Janes* v. *Whitbread*, 11 C. B. 406, *Coates* v. *Williams*, 7 Exch. Div. 205, and *Boldero* v. *The London Co.*, 5 Exch. Div. 47, already cited, in each of which cases they are sustained.

Those assignments were stated to be the stereotyped form in London.

Like the one at bar, they open with conveyances to the trustee "in trust to sell" and divide the proceeds among the creditors.

In each case the trust to sell and divide the proceeds is thus distinctly pointed out as the principal purpose of the instru-

ment; so that everything else which follows is by the general rules of construction, which we have cited as applicable to this case, to be regarded as purely incidental and as limited by this general direction.

Then each follows with a general authority unrestricted except as restricted by the context which precedes, authorizing the trustees, not directly, but by a clear implication, to carry on the trade without any express limitation as to time.

On this point the instrument at bar has an advantage over the English cases; because in it the carrying on of the business is restricted by the numerous and positive directions, to proceed promptly in winding up the estate, and because also the trustee is further restricted by the fact that the trade is to be carried on only "if for the best interests of the creditors," this being so expressed as to be directly under the control of the court, all as we have already shown.

The assignment in the case of *Janes* v. *Whitbread* expressly authorizes the trustees to employ the debtor, or any other person or persons, in winding up, "and in carrying on his "trade," and to pay for his services; and the same appears in terms or in substance in the others.

This does not differ in anything except the mere letter from the case at bar.

In the English cases the language was: "employ;" while in the case at bar it is to "allow" the grantor to operate, "the "profits of the same being receivable by the aforesaid grantee "for the purposes aforesaid."

7. The Connecticut court endeavors to destroy both instruments by combining them.

If both are invalid by their own terms, this was not necessary.

If either was valid, the court has no right to combine it with an invalid instrument, for the purpose of destroying it.

Moreover the two instruments were on different trusts. They would not merge in law or in fact as one transaction, except for beneficial purposes, and, if neither law nor equity merged them, creditors who have assented to them, of course have the option of maintaining either of them separately from the other, if necessary, in order to sustain their claims under them or either of them.

Not only are they on different trusts, but they are not executed by the same parties, and they are several, while the mortgage was joint.

The creditors, and Chafee as their representative, have a right to rely on either without being prejudiced by the other.

If the mortgage is valid, the assent to the assignment, which the law otherwise would presume, cannot be presumed, if such presumption would destroy the mortgage; and, if the mortgage is invalid, the presumed assent to the assignment, as being clearly beneficial, stands in full force.

The rule of the Connecticut court is in conflict with that of this court upon the same point, as follows:

By the mortgage, the debtors reserved the right, rec. pp. 10 and 11, to anticipate the payment of the principal.

Therefore they had a right, either by applying other property, or by giving the trustee more absolute control over the right of redemption of this property, to make their estate available for that purpose.

This is exactly the state of affairs in *Estes* v. *Gunter*; 122 U. S. 450, where the court said on p. 455, speaking of a reservation in the mortgage which was claimed affected the validity of the mortgage, that the reservation was defeated by an assignment which included the property in question, and pro-

vided that the assignee should take possession and sell and dispose of it with all convenient diligence.

In the Connecticut case the court, combined the two instruments and held that the provision in the mortgage which the court alleged served to tie up the property for three years, infected the assignment; while the reverse was held by this court in *Estes* v. *Gunter*.

In *Chafee* v. *The Fourth National Bank* 71 Me. p. 514, the court says the corporation, mortgaged to a trustee, "and "afterwards, on the sixth day of April, 1874, by another instru- "ment, made the conveyance absolute and gave the trustee "authority to sell the property and apply the proceeds for the "declared purposes of the trust."

8. The point made in *Gardner* v. *The Commercial National Bank*, 13 R. I., 173, that one fraudulent conveyance cannot be purged by a subsequent trust deed, is not applicable here.

Cases of that character proceed on the hypothesis that a transfer is good between the parties to it, and nothing remains in the debtor to convey. But in the case at bar the question is, that the interest did remain in the debtor, which, when conveyed, was capable of developing in the trustee the right to recover the whole property, if the mortgage itself was invalid for any reason.

The rule that a fraudulent transfer cannot be validated by a subsequent *bona fide* transfer to the same property, if the rule exists at all, stands on narrow technical principle, is against justice, and seems to be sufficiently met in this case by the above distinction.

If, as is claimed by the appellants and complainants, the case at bar is to be governed without reference to the local law of Rhode Island, then we cite *Sumner* v. *Hicks*, 2 Black, 532, where in the case of a valid assignment following one

which was fraudulent and voidable, the court sustained the latter, and approved the general rule that a deed, even fraudulent in its creation and voidable by a purchaser, may become good by matter *ex post facto*.

9. *We have discussed these assignments, not because we are obliged to* rely on them for our title, but mainly in order to meet the proposition of the Connecticut court.

X. Effect of the Decision in Austin v. The Sprague Manufacturing Co.

1. At the Circuit, the Circuit Judge decided to follow this case, as he had previously done in *Moulton* v. *Chafee*, 22 Fed. Rep. 26, stating that the facts at bar do not differ materially from those proven in the State court.

So also in a suit brought by one of the parties interested in the case at bar, namely, *Waterman* v. *The Sprague Manufacturing Co.*, 12 Atlantic Rep. 240, one of the fundamental grounds of decision in favor of Waterman was, foot of p. 244, that by the law of Rhode Island the mortgage was a valid and effective instrument as against Waterman, that, therefore, the plaintiff properly refrained from effort to proceed in Rhode Island; that he was not presumed to know the law of Connecticut, and so that his delay could not be pleaded against him as laches in the latter State.

The parties in interest in this case should not be allowed to defeat us in Connecticut on the ground that the law of Rhode Island is conclusive, and also defeat us in this Court on the ground that this is of no account.

2. As we prefer to keep on the safe side of the various expressions in this Court concerning the effect of decisions of local courts, we have developed as carefully as possible the various particulars concerning this trust mortgage and the

history of the law of Rhode Island with reference thereto, in order that the court may see the entire propriety of the conclusion reached at the Circuit.

Here we have in the State court a well reasoned opinion sustaining the mortgage, given in a case commenced before the one at bar, and based, as will appear in the opinion in 14 R. I. 175, on the identical proceedings by Waterman upon which the case at bar is based, and relating to shares of stock of the Phenix Iron Foundry sold on the same execution in favor of Waterman on which the Quidnick Co. stock was sold, the purchaser at the execution sale invoking the jurisdiction of the State court.

3. We suppose the judiciary act making of the laws of the several states rules of decision, does not by its terms apply to this case at bar; but, on the other hand, we also suppose that, inasmuch as this is not a case of a commercial character and as the complainant's title is strictly a "legal" one, and not "equitable," so that, with reference to his underlying title, no general doctrines of equity apply in his behalf, the court here has the same duty which rested upon the supreme court of Rhode Island, namely; to ascertain what was the law of Rhode Island and be governed by it.

"The plaintiff in error, being a citizen of New Jersey, had "a constitutional right by virtue of that fact to invoke the "jurisdiction of the courts of the United States, and is entitled "to their judgment upon his rights *under the laws of Penn-* "*sylvania.*"

Gibson v. *Lyon*, 115 U. S. 439-446.

That we do not go beyond the rule as applied by this court in suits in equity, as well as at common law, will be seen as

we hereafter take up the following cases, all of which were in equity, namely:

Brashear v. *West*, 7 Peters, 608.
Sumner v. *Hicks*, 2 Black, 532.
and perhaps some others.

So far as what has preceded in this brief shows, with reference to any particular points, or, indeed, with reference to the whole mortgage, that the law of Rhode Island is settled, either by a line of decisions of the court, or by general recognition and usage for a long period of time, or otherwise, this Court seems conclusively bound to follow it; and so far as it is not thus settled, inasmuch as we have shown by balancing principle against principle and case against case, that in no event can it possibly be claimed that the case against any part of the mortgage is a strong one, this Court ought to accept the local decision as "entitled to the highest respect," as stated in *Bucher* v. *Cheshire Railroad Co.*, 125 U. S. 555 and 584, or to "peculiar respect," as stated in *Gibson* v. *Lyon*, 115 U. S. 439-446, or to lean to an agreement with it as stated in *Anderson* v. *Santa Anna*, 116 U. S. 356-365.

We accept the rule as stated in *Norton* v. *Shelby County*, 118 U. S. 425-439 as follows:

"Upon the construction of the constitution and laws of a "State, thiscourt, as a general rule, follows the decisions of her "highest court, unless they conflict with or impair the efficacy "of some principle of the Federal Constitution, or of a federal "statute, or a rule of commercial or general law."

Or the rule as laid down in *Bacon* v. *The Northwestern Life Ins. Co.*, 131 U. S. 258-264 as follows:

"As the question involved the legality of proceedings pro- "vided for by the statutes of the State, and is thus a question

" of the construction of a State statute by the highest court " of the State, or, more properly, perhaps a rule of property in " that State, we would follow the ruling of the Michigan " Supreme Court upon it even though we might have some " doubts upon it as an original proposition."

Or the rule as laid down at greater length, and therefore, perhaps, with more precision in *Bucher* v. *Cheshire Railroad Co.*, *supra*, p. 584, and *Gibson* v. *Lyon*, *supra*, 446.

We assume it will be admitted that the law as recognized by usage or acquiescence for a long peroid of years, is quite as binding for this purpose as though found in judicial decisions.

4. The case at bar is really one of administration of an estate, as to which inextricable confusion comes from conflicting decisions, and which, therefore, is ordinarily and necessarily left to the local tribunals.

5. It is also fundamentally a question of application of property to the payment of debts, being a question as to which class of creditors shall prevail.

Whatever may be said about the statute of frauds, or the principles of fraudulent conveyance, it all results, so far as this case is concerned, into that single matter.

Except where the United States interferes under the express provisions of the constitution by a bankruptcy statute, the matter of application of property to the payment of debts has been strictly regarded as of state cognizance and as peculiarly a local question.

This principle was recognized by statute in that provision, R. S. Sec. 933, dissolving attachments upon process of United States courts when, according to the laws of the State, they would be dissolved upon like process from the State courts, and further by the statutes conforming mesne and final proc-

ess with reference to proceeding against property to mesne and final process of the local tribunals.

6. So far, also, as this case relates to the transfers of stock in corporations organized by the state, all such matters have continuously been held as by their very nature controlled by the local law, the corporation being the creature of the State, and the stock having a local habitation ; and working out the same principle, the transfers of stock of national banks and corporations organized by national law, are governed by Federal rules.

7. It is claimed that the principles applicable to fraudulent conveyances are matters of general jurisprudence.

No doubt the underlying principles are of that character, and probably are of universal application.

But the application of details, rules of evidence, all the questions concerning constructive frauds, and all that class of questions which arise in this case, are strictly of a local character, and have been uniformly so regarded by this Court.

In *Brashear* v. *West*, 7 Peters, 608, a case in equity, Marshall, Chief Justice, considered on general principles certain propositions which it is claimed establish the fraudulent character of an assignment for the benefit of creditors, and speaking of the last objection said p. 595:

" Whatever may be the intrinsic weight of this objection, it " seems not to have prevailed in Pennsylvania. The construc- " tion which the courts of that State have put on the Pennsyl- " vania statute of frauds must be received in the courts of the " United States."

This was the statute relative to fraudulent conveyances.

In *Sumner* v. *Hicks*, 2 Black, 532, which was also a bill in equity, the court said :

" The statute of Wisconsin on the subject of fraudulent

"conveyances is substantially the same as 13 Elizabeth, Chap. "5"; and "in cases like this, involving the construction of a "State statute, the court is governed by the highest judicial "authority in the State."

In the late case of *Robinson* v. *Elliott*, 22 Wall. 513, which the Court finally decided upon general principles, there being no direct decision in Indiana, the Court at every point showed it was reaching out to ascertain what was the local law of that State, and referred to the various phases of it on pp. 520, 521, 522, 523, 524 and 526.

In *Means* v. *Dowd*, 128 U. S. 273, this court followed the law of North Carolina so far as it could be discovered, p. 280.

Many other cases undoubtedly can be found but these are sufficient to establish our point.

8 Now coming to a closer application of these general doctrines, we find upon some points that the law of Rhode Island has been settled and uniform for a long period, as follows:

a. That, arising from the commercial necessities of the State, voluntary transactions providing equality among creditors are favored. P. 42 of this brief.

b. That all the circumstances surrounding the execution of the instrument are to be considered on the question of alleged fraud, and that the court is to put itself at the precise point of view of the parties to the transaction. See this brief, p. 41.

c. That the doctrine of *Owen* v. *Body*, 5 A. & E. 28, in so much as it was supposed to deter creditors by the possibility that they might be made liable as co-partners, is not the law of Rhode Island. See this brief pp. 58-59.

d. That in the construction of written instruments, the existence of fraud is a question of fact whenever their terms and stipulations are by possibility compatible with good faith,

and have upon their face the essential elements of a legal contract. See this brief pp. 40-41.

e. That, as appears by this brief, pp. 59-61, words nominally vesting a power according to the "discretion" of a trustee, still leave the power subject to the control of the Equity courts.

f. That, as appears by this brief, pp. 40-41, 75, 83, arrangements by which the mortgagor retains possession, operate, sell and renew, do not invalidate mortgages, as in other localities, but are regarded as useful, and sometimes beneficial for all concerned.

g. That there are other matters relating to this question before the court which have thus been fully established, and which will appear upon an inspection of the authorities and principles herein stated.

h. That while, of course, it is not to be expected that a mortgage or assignment precisely in form like these at bar, would have been before the Rhode Island courts for their decision, yet the principles thus settled underlie these at bar, and are so involved in its elements that the entire decision of the court in *Austin* v. *The Sprague Manf. Co.*, may justly be assumed as only declaratory of what had gone before.

9. In addition with reference to instruments which involve so much local knowledge of mercantile usages, local public interests, private interests of such character and so often repeated, that they amount to public interests, local usages, local peculiarities of the law which do not always appear in the reports and peculiarities which do so appear, as do these instruments at bar, and also with reference to instruments which are admitted to have been honestly put on foot and in support of the legality and validity of which there was so much to be said by the Supreme Court of Rhode Island in

Austin v. *The Sprague Manf. Co.*, it would seem that this Court is under peculiar obligations to accept this local decision as entitled to "the highest respect," and to "peculiar respect," and "to lean to an agreement with it," and thus accept it, unless it can be practically demonstrated to be wrong, which would seem impossible.

XI. The claim is Unconscionable.

Mississippi & Missouri R. R. v. *Cromwell*, 91 U. S. 643, 645, seems directly in point.

In this case, like the one at bar, the creditor had seized on his execution a large amount of stock and bid it in through the complainant, Cromwell, for $50; and this Court said as follows:

"The levy * * * * and * * * * sale by Harrison "* * * * was evidently not done for the honest purpose "of making his debt by the sale or he would not have "allowed it to be sold for fifty dollars." * * * * * *

"He," (the purchaser), "comes into court with a very bad "grace when he asks to use its extraordinary powers to put "him into possession of $30,000 worth of stock for which he "paid only $50."

And this court directed Cromwell's bill to be dismissed.

That Waterman and Randolph are not trying honestly to collect their debts, but are seeking an unconscionable, indeed a monstrous advantage, is apparent from the following:

Waterman's judgment was for $12,209.57, Randolph's for $34,500; yet they sold on these executions, and Randolph bought in and now claims to hold 4,022 shares of Quidnick Co. stock, paying for all $275.

According to the evidence on page 252, the dividends which in law Randolph as holder of these shares might de-

Pages of Record.

mand is cash $583,190, and mortgage notes, secured by the mortgage here in dispute, $222,547.26.

But this is not all.

It is in evidence that upon this execution he sold and himself purchased Governor Sprague's residence, Canonchet, a 500
valuable estate containing 408½ acres of land, with extensive improvements.

It also appears that the property of Hoyt, Spragues & Co. (who, Amasa Sprague testifies, were supposed to be able to take care of their own indebtedness) was open to him as a 179
creditor.

In *Cranson* v. *Smith*, 47 Mich. 647, a suit in equity by a judgment creditor to set aside a fraudulent conveyance, the court adopts the rule:

"If the judgment creditor is entitled of strict legal right
" to proceed to the sale where the title of record is not in the
" judgment debtor, and where the competition at the sale
" will be precluded by that fact, it is no more than justice to
" leave him to rely upon the strict legal right and to refuse
" equitable assistance in perfecting a sale that ought not to
" have been made under the circumstances."

In *Smith* v. *Vreeland*, 1 C. E. Green, N. J. 198, the court decides that:

Where a party has become himself the purchaser for an inadequate sum, all that the complainant can ask in equity is the payment of his debt.

This case will justify careful examination.

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Supreme Court of the United States.

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THE QUIDNICK COMPANY ET ALS.

Memoranda of Additional Cases Cited by the Counsel for the Appellees.

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A.

WITH REFERENCE TO THE DISTINCTIONS BETWEEN MORTGAGES AND ASSIGNMENTS, P. 44 OF BRIEF.

In White *vs.* Cotzhausen, 129 U. S., 329, the Court said, page 342:

"We would not be understood as contravening the general principle, so distinctly announced by the supreme court of Illinois, that a debtor, even when financially embarrassed, may in good faith compromise his liabilities, sell or transfer property in payment of debts, or mortgage or pledge it as security for debts, or create a lien upon it by means even of a judgment confessed in favor of his creditor. (Preston *vs.* Spaulding, *ubi supra*; Field *vs.* Geoghegan, 125 Illinois, 70.)

"Such transactions often taken place in the ordinary course

of business, when the debtor has no purpose in the near future of discontinuing business, or of going into bankruptcy and surrendering control of all his property.

"A debtor is not bound to succumb under temporary reverses in his affairs, and has the right, acting in good faith, to use his property in any mode he chooses, in order to avoid a general assignment for the benefit of his creditors.

"We only mean by what has been said, that, when an insolvent debtor recognizes the fact that he can no longer go on in business, and determines to yield the dominion of his entire estate, and in execution of that purpose, or with an intent to evade the statute, transfers all or substantially all his property to a part of his creditors in order to provide for them in preference to other creditors, the instrument or instruments by which such transfers are made and that result is reached, whatever their form, will be held to operate as an assignment."

The case arose under the statute of assignments of Illinois, and it cites as pertinent a number of decisions from the Missouri circuits.

In Hargadine *vs.* Henderson, decided by the supreme court of Missouri, March 4, 1889, reported in Southwestern Reporter, vol. 11, 218, the instrument, which was in form an assignment in the fact that it ran to a trustee and did not contain a conditional clause, was held nevertheless, under the circumstances, to be a mortgage and not within the statute.

This instrument was like that at bar, in the respect that it provided that the trustee might sell the property, or a portion of it, at any time and apply the proceeds upon the debt.

An important case in our favor is Johnson's Appeal, 103 Penn. St., 373, where was an instrument by virtue of which a debtor in failing circumstances arranged for an extension from all his creditors and secured them on a large portion of his estate. The court held that it was not an assignment

for the benefit of creditors, and that the question was one of intent, using the following language:

"We are of opinion that the mortgage in this case was not an assignment for creditors under the act of 1836; that it was not intended as such by either the mortgagors or the mortgagee is too plain for argument, nor have any of the creditors intended to be benefited thereby ever treated it as such. The facts connected with it, briefly stated, are that Malin Brothers, residents of Montgomery county, becoming embarrassed in 1875, obtained an extension of 24 months from their creditors, and, in order to secure their liabilities thus extended, executed the mortgage in question upon their real estate to the appellant as trustee. The consideration of the mortgage was the extension, and, had the extended paper been paid at maturity, the condition of the mortgage would have been performed and the mortgagors entitled to have satisfaction entered of record."

* * * * * * *

"Moreover, the mortgage was not an absolute transfer of anything; it was a mere pledge or security. In this it lacks one of the essential features of assignments under the act of 1836. In all the instruments which have been held to be assignments for creditors there has been in some form an absolute transfer of the property. The assignor parted with all his title and control thereof, save alone the right to have any surplus reconveyed to him that might remain after the payment of his debts."

Like cases were Cadwell's Bank *vs.* Crittenden (66 Iowa, 237) and Jaffray *vs.* Greenbaum (64 Iowa, 492).

In the latter case the following is found (page 495):

"But there was evidence tending to show that the mortgages did not cover substantially all the mortgagors' property and were not designed to, and we think that the evidence is such as to justify us in concluding that such was the fact; but, whether we are correct in this or not, it seems

clear to us that the mortgages cannot be regarded as an assignment. We are well satisfied that the mortgagors did not execute them without a hope of redemption, and did not regard them as a mode of making a final disposition of the property under an appearance of giving security. It may be that they were badly insolvent and that the property mortgaged was insufficient to pay the mortgage debts, yet we think that the mortgagors did not so regard it at the time."

WITH REFERENCE TO "L," PAGE 53 OF APPELLEES' BRIEF, POINT THAT THE MORTGAGE COMBINED INDIVIDUAL AND CORPORATE PROPERTY WITH INDIVIDUAL AND CORPORATE DEBTS.

There should be noted the facts under "B," page 37 of the brief, that the debts of the Sprague Manufacturing Company were the individual liabilities of each of the stockholders, including Mary, Fanny, Amasa and William Sprague, and A. & W. Sprague, so that each of these stockholders had the right under the laws of Rhode Island to prefer the creditors of the corporation by mortgage or otherwise.

We cite more fully from Read *vs.* Baylies, 18 Pick., 497, referred to in the principal brief, as follows:

"The principal ground relied upon by the defendant to impeach this assignment is that it purports to be an assignment both of partnership property and of several property of the partners, and it provides that the proceeds shall be distributed amongst both partnership creditors and several creditors; but this circumstance alone is not sufficient to invalidate the assignment; to have that effect it must be shown on the part of the attaching creditor, attaching as the creditor of the firm, that these provisions in the assignment would operate injuriously to him." "But," continues the court, "it appears from the facts in the case that the amount of the claims of partnership creditors who had become

parties to the assignment before the attachment, were more than sufficient to absorb all the partnership property assigned. The debtors, by their voluntary conveyance, had a right to convey their partnership property, at a fair valuation, to pay such of their partnership debts as they chose to prefer, and under this right to prefer, they might well prefer those who would come in and become parties. Such an assignment would be good and effectual against all other partnership creditors, who should attach the property, because the creditors under the assignment had an equal right with those attaching, to rely on the principle that partnership property shall be first applied to the payment of partnership debts, and to obtain a preference, and being first in time, claiming under a good conveyance, made to trustees for their use, upon a good consideration, their title is prior in right. An attaching partnership creditor, then, has no right to complain that the partnership creditors under the assignment, have consented to let in several creditors to share with them, because such a provision does not affect the rights of such attaching creditors. The partnership creditors under the assignment would hold the whole of the property against an after-attaching partnership creditor, because the whole would be no more than sufficient to satisfy their debts, and, therefore, whether they permit several creditors to come in and share with them or not is wholly immaterial to other creditors. It is solely a question under the assignment between the different classes of creditors, when they come to claim distribution, a question with which those claiming adversely to the assignment can have no concern."

Also we cite more fully Austin *vs.* The Sprague Manufacturing Company (14 R. I., 486) as follows:

"Moreover, the individuals, as stockholders, were personally liable for the debts of the corporation. In view of these complications, it is quite proper that all the grantors should join in one instrument. If no provision is made for a proper marshaling of assets, or even if this is prevented by the community of obligation on the notes, still we cannot set the deed aside on that account, except at the request of some creditor who is injured by the diversion of that which belongs to him."

* * * * * * *

"It does not appear nor does the complainant claim, that he has been injured in any way on that account; on the contrary, the evidence shows, in the report of the committee before referred to, that there was a large surplus of private assets over private debts. It will be time enough to consider this matter fully when some creditor shows that he sustains or has reasonable cause to fear a damage on this account."

Also we refer to Nightingale *vs.* Harris (6 R. I., 321), in which case it appeared the assignment directed dividends to a class of debts which the court held could not legally be provided for; but instead of annulling the assignment on that ground the court severed the unauthorized portions.

It cannot be objected to an assignment that it provides for the private creditors of the individual members of a firm where the individual property of the members included in the assignment exceeds the amount of each one's individual debts.

Hollister *vs.* Loud, 2 Mich., 309.

If the issue had been made on this point the actual facts would have shown that the amount of trust notes issued on account of the stockholders who joined in this mortgage was a very small proportion of the amount of assets which they turned in under it.

However, the matter is to be judged of according to the circumstances as they appeared when the mortgage was made.

Mr. Hart, who was familiar with all the circumstances, testifies, page 434, as follows:

"Int 5. Will you state why and at whose desire the trust deed was executed by the parties other than the corporation.

A. At the desire of the creditors. The scheme could not have been been carried out of an extension unless the Sprague stockholders had mortgaged their private property in conjunction with the corporation. * * *

And as the report of the committee made to the bank shows that the private assets of the several stockholders was largely in excess of their private liabilities it could do no harm to the corporation or the corporate creditors."

This testimony is nowhere contradicted.

C.

IN ADDITION TO THE CASES ON PAGE 55 SHOWING THAT ASSIGNEES AND MORTGAGEES MAY LAWFULLY BE GIVEN A DISCRETION TO CONTINUE THE MANUFACTURING AS INCIDENTAL TO THE PRINCIPAL PURPOSES OF AN ASSIGNMENT:

Burrill on Assignments, fifth edition, sec. 212 says, as follows:

"Assignments are sometimes drawn with stipulations for the continuance of the debtor's business, either by the assignees or by the debtor himself under their direction; and where this is done as ancillary to winding up the debtor's affairs and with the view of more effectually promoting the interests of the creditors, they will be sustained as valid."

In the same section, however, it is stated to be held otherwise in New York; where it is said that the debtor, beyond directing in general terms the application of the property to the payment of debts, can prescribe "no conditions whatever as to the management or disposition of the assigned property."

D.

REFERRING TO THE FACT THAT NOTWITHSTANDING THE PHRASEOLOGY VESTING DISCRETION IN TRUSTEES, YET THAT WHERE THAT DISCRETION RELATES TO THE MANAGEMENT OF PROPERTY, IT IS CONTROLLED BY THE COURT, as shown by the extract from Perry on Trusts, sec. 508, page 60 of our brief.

Hill on Trustees, pages 494 and 495, Fourth American Edition, pages 773 and 774, says as as follows:

"The Court is much more ready to control the trustees in the exercise of discretionary powers of this last description than in matters of private opinion and judgment. The reason is that on these matters of fact the court is equally competent or even more competent than the trustees to determine what will be most beneficial to the trust estate; and it will enter into the consideration of the motives of a trustee in exercising or refusing to exercise such a power, and will not suffer him to exercise his discretion in an arbitrary or capricious manner."

* * * * * * *

"However, in all these cases if the trust instrument *expressly* declare that the power may be exercised by the trustee *at his uncontrolled discretion* and the terms are such as preclude the court from entering into the trustee's motives in exercising this discretion, the jurisdiction of the court is excluded and it cannot interfere, except in the case of fraud or improper motive, which is an exception to every such general rule.

"Powers of sale, of leasing, and of varying the securities also come within the class of discretionary powers which is now under consideration."

Among the cases cited by Perry on Trusts, Fourth Edition, sec. 508, are the following:

Webb *vs.* Shaftsbury (7 Vesey, Jr., 480), head note as follows:

"The court controls a trustee in the exercise of a power to appoint new trustees, although given in very large words."

The viee-chancellor said (page 493):

"The exercise of a power of renewal does indeed require a discretion, for otherwise a trustee would be bound to comply with any unreasonable demand on the part of the lessor, but not an arbitrary or capricious discretion."

In Hewit *vs.* Hewit (Ambler, 508) the head note was:

"The Power given by will to cut trees as four trustees should allow or direct. All the trustees being dead, the power remains, and the court will preserve the check and refer it to a master to see what is proper to be cut."

This case was decided by the chancellor, Lord Northington, after having taken two years' time for consideration.

Page 529 he says:

"The office of the trustees is not confided to any personal qualification, but what anybody might do—that is, see what timber is fit to be cut."

In Druid Park Heights Co. *vs.* Oettinger (53 Md., 46) the following appears from the syllabus:

"To accomplish these objects the testator created a trust, and for the purpose of making the estate productive he gave to G. and K., trustees, or the survivor of them, or the heirs, executors, or administrators of the survivor, the power of selling at public or private sale or leasing as might be most advantageous, *in their judgment*, to the parties in interest."

In the opinion (page 62) appears the following:

"But where the discretionary powers are such as would not belong to the court because of its jurisdiction over the subject-matter of the trust, independent of the authority of the will, as, for instance, where the power is one of selecting the beneficiaries to enjoy the testator's bounty, the court will not exercise it, and, under the rules of law, cannot confer such discretion on a trustee."

A clause in a deed of assignment "authorizing the trustees to sell the property conveyed whenever they shall think proper and most conducive to the interests of the trust is not objectionable."

Maennel *vs.* Murdock, 13 Md., 164.

E.

REFERRING TO REGULARITY OF PROCEEDINGS ON WATERMAN'S EXECUTION (PAGES 13 AND 14).

It is to be noted that both the sheriff's return of seizure and his notice of sale (pages 204 to 206) fail to properly decribe the stock, in all cases using the alternative, as for example:

"Standing in the name of the defendant corporation, The A. & W. Sprague Manufacturing Co., or in the name of Fanny Sprague or owned by either of them."

As this was a proceeding against Fanny and Mary Sprague, as stockholders in the corporation, it, of course, required, we will not say strictness, but correctness, in this particular.

F.

WITH REFERENCE TO THE EFFECT OF THE DECISION IN THE AUSTIN CASE PER BRIEF (PAGE 91) WE MAKE THE FOLLOWING ADDITIONAL REFERENCES.

Hanrick *vs.* Patrick (119 U. S., 156) touched a question of real-estate title which was litigated in Texas.

Page 169 the court said:

"Great weight, if not conclusive effect, in our opinion, is to be given to these decisions of the supreme court of Texas upon the question of construction of the statutes of the State as affecting titles to real estate," * * * *

The Supreme Court refers to several cases in Texas passing upon this title.

The first one is found in 54 Texas, 101, and was decided Dec. 14, 1880, while the case decided in the Supreme Court of the United States commenced Feb. 13, 1880.

We have already called attention to the fact that the decision in the Austin case was not only before this case at bar came to a hearing at the circuit, but that the former suit was also commenced before the latter.

Whether the Texas case was commenced before that in the Supreme Court does not appear.

It is to be noted that, although this case is spoken of as concerning a title to real estate, the mortgage which we are considering also relates to real estate, and the precise question before this Court relates to title to stock in a corporation, which has the same local character as real estate, and the complainant by his second supplemental bill seeks to affect the title to real estate.

G.

AS TO THE POINT THAT THE ASSIGNMENT OF APRIL 6, 1874, DID NOT MERGE WITH THE MORTGAGE, per the brief, page 64, No. 2, we cite United States *vs.* Stowell, 133 U. S., 1.

In this case the mortgagor of a still, whose title had been forfeited to the United States, conveyed his interest by quit-claim deed to the mortgagee; and on page 19 this Court held as follows:

"But this deed did not have the effect of merging or uniting the mortgage and the equity of redemption in one estate, because, by reason of that intervening right, it was for the interest of the mortgagee that the mortgage should be kept on foot; the quit-claim deed being void or voidable, left the mortgaged estate exactly where it found it."

H.

WITH REFERENCE TO THE POINT IN OUR BRIEF THAT THE RANDOLPH CLAIM IS UNCONSCIONABLE, P. 98:

"Now, it is a familiar doctrine of courts of equity that where a contract appears extortionate and unconscionable

it will not be enforced; so, where a complainant is seeking to obtain some unfair and unjust advantage, or, having been fully compensated for his time and labor and money, is seeking by technical rules and legal proceedings to grasp more, and wherever generally, it would be inequitable so to do, a court of equity will refuse him any relief."

Gottlieb *vs.* Thatcher, 34 Fed. Rep., 440.

"While a court of equity in setting aside a deed of a purchase upon grounds other than those of positive fraud, annuls it upon terms, and requires a return of the purchase-money, or directs that the conveyance stand as a security for its repayment, this principle has no place as applied to an action at law. This constitutes one of the essential differences already discussed between relief in equity and the judgment extended by a court of law. The latter court, as we have said, can hold no middle course. The entire claim of each party must rest and be determined at law upon the single point as to the validity of the deed, but it is the ordinary case in the former court to decree that a deed not absolutely void, yet, under the circumstances, inequitable as between the parties, may be set aide upon terms."

Wait on Fraudulent Conveyances, second edition, sec. 193.

"When the proceeding is in chancery the jurisdiction exercised is more flexible and tolerant. The equity appealed to, while it scans the transaction with the severest scrutiny, looks at all the facts, and giving to each one its due weight, deals with the subject before it according to its own ideas of right and justice. * * * *

"The cardinal principle in all such cases is that the property of the debtor shall not be diverted from the payment of his debts to the injury of his creditors by means of the fraud."

Clements *vs.* Moore, 6 Wall., 312.

In Erwin *vs.* Parham *et al.*, 12 How., 197, the bill was sustained on demurrer; but the following extract from the opinion, p. 206, shows that the principle which we claim was admitted:

"And as the bill stands on demurrer, and nothing beyond

its allegations can be considered, it is not possible for us to say that the complainant is entitled to no relief at all, and therefore dismiss his bill.

"He paid only six hundred dollars for these thirteen notes, amounting in the aggregate to $260,000. This was paid on an execution sale admitted by the demurrer to have been open to competition, regular and fair. The payer, Parham, may have been insolvent and the mortgage of no value, for want of title in the mortgagor. In such event no startling inadequacy of price could be predicated of the enormous disparity between the nominal amount of the notes and the price paid for them."

The supreme court of Rhode Island has said:

"Courts are without doubt exceedingly reluctant to infer fraud from mere inadequacy, for fear of impairing freedom of contract, and very few cases, if any, can be cited in which they have done it. We think, however, that this may unquestionably be said in regard to gross inadequacy of consideration, namely: That whenever it exists it suggests a strong suspicion of fraud, which the court will search as with a microscope to find, and it will be quick to seize upon the slightest circumstance of unfairness or oppression to grant relief."

Brown *vs.* Hall, decided July 19, 1883 (14 R. I., 249–251.

In Byers *vs.* Surget (19 How., 303) an attorney who obtained a judgment for costs for $39.10 was active in taxing the costs, obtaining the execution and supervising and directing the proceedings of the sheriff, and purchased upon the execution 14,000 acres of land, worth about $70,000. The transaction was set aside.

The Court, among other things, says as follows:

"To meet the objection made to the sale in this case, founded on the inadequacy of the price at which the land was sold, it is insisted that inadequacy of consideration, singly, cannot amount to proof of fraud. This position, however, is scarcely reconcilable with the qualification an-

nexed to it by the courts, namely, unless such inadequacy be so gross as to shock the conscience, for this qualification implies necessarily the affirmation that if the inadequacy be of a nature so gross as to shock the conscience, it will amount to proof of fraud. Again, in answer to the same objection, it is insisted that whatever presumption arising from inadequacy of consideration may be permitted with respect to transactions strictly limited to vendor and vendee, no unfavorable inference from that cause is permissible with respect to sales made under judicial process. Certainly the facts that sales are made by the officers or ministers of the law and under its authority, may properly weaken the usual presumption arising from gross inadequacy; but to declare that such inadequacy connected with other facts and circumstances evincing fraud or unfairness could never be regarded as affecting sales under process, would be as rational as the assertion that process of law could never be abused, and that the ministers of the law must necessarily be intelligent and upright, and incapable of being ever willingly or unwittingly made the instruments of fraud or oppression."

The Court animadverts on the facts to which we have already called attention, and closes as follows:

"When all these acts on the part of the appellant are adverted to, they impel irresistibly to the conclusion that the gross inadequacy of consideration in the sale and purchase of these lands was the premeditated result which the proceedings by the appellant were put in practice to insure. They betray that *malus dolus* in which the design of the appellant was conceived, which appears to have presided over and regulated the progress of the design from its birth to its consummation, to which design the appellant has tenaciously clung, in the seeming expectation that it was beyond the corrective powers of law or justice."

It appears (pages 252–'3) that the Quidnick Co. shares, which appellants claim, represent a cash value of $583,190, plus their proportion of $97,000, equal to $90,475, or a total cash value of $673,665; to which are to be added notes secured by the mortgage in dispute of $222,547.26, making a total nominal value of $896,212.26. All of this was bid

in by Randolph for the sums of $100, plus $175, a total of $275. (Pages 197–'8 and 204–'5.)

Moreover it appears by the record that the William Sprague estate at Canonchet, also covered by this mortgage, was bid in by Randolph for $100 (p. 500), although worth at least $62,250. (P. 299.)

Also in the suit of Moulton *vs.* Chaffee *et al.*, (p. 298), and sequence, and which suit related to the title of Canonchet, Wm. Sprague, one of the original mortgagors and defendants in the Randolph suit at common law, in his answer to the bill, p. 334, set up the attachment of Randolph on the Canonchet estate, and through Henry Pitman, clerk of the U. S. C. C., a witness called by him, Wm. Sprague, (p. 483), put in the record in Randolph's suit, commencing p. 495, with the sale of the Canonchet estate on execution (p. 500).

It will also appear (p. 195), that the agreement for judgment, signed by Patton as the attorney for Amasa Sprague and Wm. Sprague in the suit of Randolph at common law, was filed March 7, 1883, with an express stipulation that execution issue.

Execution did issue on the 7th of March, the very day on which judgment was taken.

In view of the stipulation for an immediate execution and the possible uncertainty of the law as to the effect of a premature issue, we do not trouble the Court on that point as a distinct subject-matter.

But it appears (p. 198,) that on the same day on which judgment was taken, the marshal seized on the execution all the interest of Wm. Sprague and Amasa Sprague in the Quidnick Company stock, and (p. 500) the Canonchet estate, all as early as half-past eleven o'clock in the forenoon.

All this sudden heat was in a suit which had slumbered nearly eight years.

The Canonchet estate was worth double the amount of the execution. The Quidnick stock of Amasa Sprague was

worth more than ten times its amount, and so was that of Wm. Sprague; and yet all three parcels were seized and sold, although upon a fair sale, or indeed upon a purchase by Randolph, if he was seeking only to obtain payment, either of the three parcels was more than sufficient to satisfy his execution.

March 23, page 197, Wm. Sprague's stock, worth more than $375,000, was purchased by Randolph for $50, and on the same day Amasa's stock, of like value, was purchased by him, also for $50; and on the 23d day of August Canonchet was also purchased by him for $100.

But the scheme went even further. In order to grasp everything, something more was necessary, as Randolph's execution could not run against the stock of either Fanny or Mary Sprague or the Sprague Manufacturing Company.

It appears, pages 202 to 207, that Waterman's suit was commenced in 1882; that Patton, attorney for the Spragues, appeared and pleaded the general issue; and that Messrs. Parkhurst and others, who were in the interest of Chaffee, filed a special plea, which was stricken out, undoubtedly for the reason that these gentlemen, although they represented through Mr. Chafee all the essential interests of the Sprague Manufacturing Company, were not technically authorized to represent that corporation.

What we have said on our main brief on the question of limitations ought to satisfy the Court that Mr. Patton, as representing the corporation, could have defended the suit successfully, if he had been instructed so to do by his clients.

The corporation, however, submitted to a judgment on the 18th of December, 1882, for $12,209.72.

Matters thus rested quietly until Mr. Randolph prepared to move; when March 2, 1883, five days before judgment was taken in the Randolph suit, but simultaneously with the agreement for that judgment, execution issued in behalf of Waterman, and on this we see a repetition of the programme pursued with reference to the Randolph execution.

From the standpoint of the complainant, the A. & W. Sprague Manufacturing Company was then the absolute owner of 455 shares of Quidnick Company stock, worth not less than a cash value of $80,000, and these were seized March 22, 1883, the day before the sale to Randolph, and sold April 3, 1883, to Randolph for $100. (Pp. 203–4).

Both Fanny and Mary Sprague were liable only, as it were, as sureties for the debts of the Sprague corporation, and, as it turns out under the statute of 1877, as construed in Bank *vs.* Franklin, 120 U. S., 47 (see principal brief, page 14) could be proceeded against either in person or property only by a suit upon the judgment against the corporation. Yet so eager were these parties to grasp the whole, that before an attempt was made to realize from the shares of the corporation which was primarily liable for the debt, at the same hour and the same minute on which they seized the latter, they also seized the 802 shares formerly belonging to Fanny Sprague and the 601 shares formerly belonging to Mary Sprague, advertised (page 206) all three lots to be sold together at the same hour on the 3d of April then next following, and did assume so to sell the same to Randolph (pages 204 and 205) for the sums, respectively, of $100, $50, and $25.

Nor was this all. During what period, in what manner, to what extent, and how many times the sheriff advertised or gave notice of the sale on the Waterman execution does not appear.

The statute required at least ten days' notice; and as the seizure was on the 22nd of March and the sale on the 3rd of April, there was no grace given.

Also the stock of Fanny and Mary, as appears page 206, was so described in the notice, that a purchaser was not informed whether the stock to be sold was that of the defendant corporation or of the ladies named; nor was the information given that the sale of these lots of stock would follow the sale of that of the A. & W. Sprague Manufactur-

ing Co., or that any effort would be made to ascertain whether the sale of the former would discharge the execution before offering the latter.

So also the notices of the sale of stock on the Randolph execution, page 197, failed to give parties the slightest intimation of the amount of stock proposed to be offered, containing merely the words, "being all the right, title, and interest," etc., without any specification of the number of shares.

These proceedings, including those with reference to the Canonchet estate, would seem to bring the facts of the case clearly within the principle of the Mississippi and Missouri Railroad Co. *vs.* Cromwell (91 U. S., 643), cited in the brief, namely, that the sales were evidently "not made for the honest purpose of making the debt."

They also exhibit not merely "gross inadequacy of consideration," but one which shocks the conscience; and they combine this with much more than the slight "circumstances of unfairness or oppression" which the supreme court of Rhode Island required, in the case of Brown *vs.* Hall, to enable it to grant relief.

They also more than supply the condition of facts stated in Byers *vs.* Surget, *ante*, as well as exhibit a larger disproportion between the consideration paid on the execution sale and the value of the property.

C. Frank Parkhurst,
Arthur L. Brown,
Augustus S. Miller,
Joseph C. Ely,
Solicitors.

William L. Putnam,
Of Counsel.

March 10, 1890.

JAMES H. MCK...

Supreme Court of the United States.

OCTOBER TERM, 1889.

IN EQUITY, NO. 213.

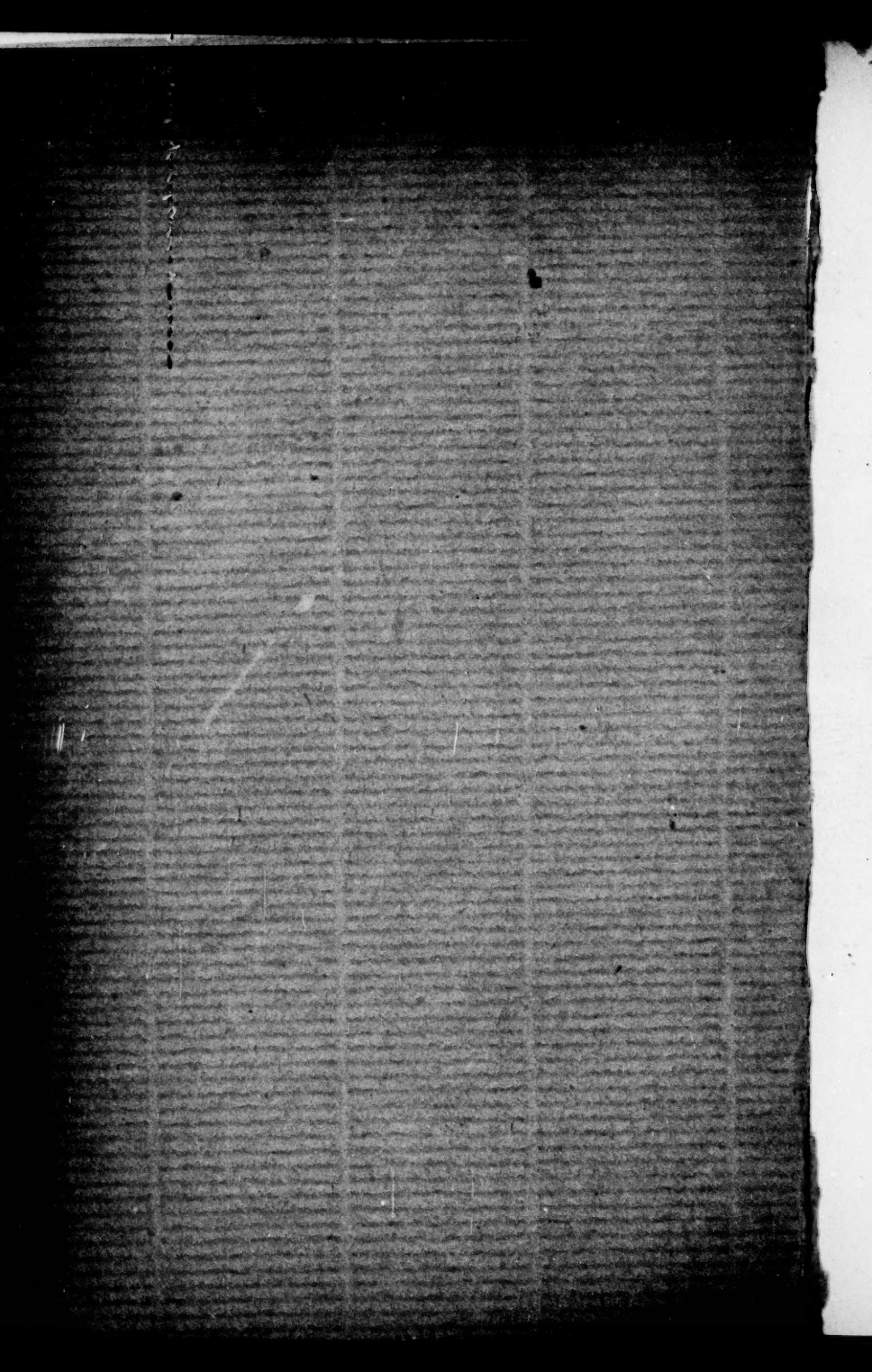
EVAN RANDOLPH'S Executors, Appellants,

v.

THE QUIDNICK COMPANY, Et Al., Appellees.

Appellees' Reply to the Appellants' Supplemental Brief, filed by leave of Court, Mar. 25, 1890.

Brown Thurston Company, Printers.



Supreme Court of the United States.

October Term, 1889.

EVAN RANDOLPH'S EXECUTORS,
Appellants,
v.
QUIDNICK COMPANY *et al.*,
Appellees.

In Equity,
No. 213.

APPELLEES' REPLY TO THE APPELLANTS' SECOND SUPPLEMENTAL BRIEF, FILED BY LEAVE OF COURT MARCH 25, 1890.

The circumstances under which this reply is drawn prevent such careful attention as to enable the counsel to hope to throw therby much light on the case; and therefore we submit it mainly to excuse ourselves from any possible charge of having neglected our opportunities.

A

Pages 1 to 20, and 39 to 43 of the appellants' second supplemental brief treat of the executions, and of the act of 1877. The same questions were examined in the appellants' first supplemental brief, pages 1 to 11.

Appellants take the point, page 5, that the defenses to which this part of the appellants' second supplemental brief refers, were not set up at the circuit.

It may be that this Court has never made certain in what way it is to be determined what questions were set up, or waived, at the circuit under the rule now so well known.

Whether or not this Court can examine the briefs, or ascertain what questions were in fact argued at the circuit, or is limited to what appears on the record, we do not presume to express any view.

As the case at bar was disposed of at the circuit by the same judge who disposed of Moulton *v.* Chaffee, 22 Fed. Rep. 26, and as nothing apparently intervened to raise any suggestion that he would change his views, it may well be presumed that the arguments at the circuit were limited to the point that the case at bar was on all fours as to the facts with Moulton *v.* Chaffee, *ante.*

We are informed by the counsel who argued at the circuit the case at bar, that this was substantially the line of argument on the part of the counsel for the respondents, inasmuch as no other questions seemed to be open; but we are also informed that the counsel for the respondents expressly stated in the arguments that all defenses were reserved.

The rule which the appellants thus rely on is undoubtedly just and wise, and has covered many great gaps; as, for ex-

ample, the question of jurisdiction based on the point that there was a remedy at law.

Kilbourn *v.* Sunderland, 130 U. S., 505.

And all questions concerning the order of proof, the using of copies in the place of originals, and all other like questions which it is evident might be obviated during the preparation, or hearing, of the case at the circuit, if attention had then been called to the defect.

An example is a letter found in the record not proven nor objected to.

Hoyt's Administrator *v.* Hanbury, 128 U. S., 584.

And also the principle expressed in the thirteenth rule, to the effect that no objection shall be taken in this Court to the admissibility of any exhibit, unless taken and noted below.

There is another class of cases arising on a writ of error, where the plaintiff in error cannot, under the statute, maintain his writ, unless he shows that his exceptions in the court below were well taken.

Klein *v.* Russell, 19 U. S., 433.
Badger *v.* Ranlett, 106 U. S., 255.

An examination of the cases which have been decided with reference to this rule, will show that it is administered strictly against the party appealing or bringing up the case on a writ of of error, but hardly administered at all against the defendant in error, or appellee, on any questions in any degree touching the merits.

It is enough that the prevailing party furnished the court below a single proposition sufficient to maintain his case, without unnecessarily developing a whole line of propositions which the court would not care to hear, and might indeed even refuse to listen to.

C

All these principles apply fully to the transfers of the Quidnick Co. stock, which are hypothetically discussed in appellants' second supplemental brief, pp. 31 to 36; but the regularity of which were so far from being challenged, either in the bill, or when offered in evidence, that neither party deemed it essential to put in below the records or by-laws of the Quidnick Co. with reference thereto.

D

But this rule has been administered reasonably and justly, and has not been applied to defenses which concern the jurisdictional power of the courts of the United States, nor in behalf of plaintiffs in error, or appellants, in such way as to clearly lead to unjust or unlawful results, nor to sustaining a bill, the underlying principles of which equity abhors.

One phase of this statement appears in the case so much discussed by the appellants, namely: Fourth National Bank *v.* Francklyn, 120 U. S., 747. Here the Court refused to apply the rule in favor of the plaintiff in error, under such circumstances that otherwise the effect would be to make the rights of the parties depend on a statute which the Court was bound to know was not the one governing the case.

With reference to all such matters, neither the negligence of either party to set up specifically the facts, nor, indeed, their united action would induce this Court to exceed its constitutional or statute jurisdiction, or to proceed upon a bill in equity which sought an unconsionable result, or to aid fraud, actual or constructive.

Like the matter of laches, which it is now well settled may be availed of although not set up in the answer, all these matters which thus go to the roots of proceedings are not within the rule of practice we are discussing, and will be seized on by the Court, however indifferent the parties may be with reference to them.

"The equitable powers of this Court can never be exerted in behalf of one who has acted fraudulently, or who by deceit or any unfair means has gained an advantage. To aid a party in such a case would make this Court the abettor of an iniquity."

Bein *v.* Heath, 6 How. 228-247.
Kitchen *v.* Rayburn, 19 Wall. 254 and 263.

E

This explanation of the limitations of the rule cited by appellants, p. 5, from Clements *v.* Moore, 6 Wall. 299-311, applies fully to the defense of unconscionableness and legal fraud on the part of the complainant, developed under point XI, pp. 98 and 99 of appellees' principal brief, and on pp. 11 to 18 of appellees' memoranda of additional cases.

Moreover this defense could not be set up in the answers, and was developed by the evidence in the case; because it

appears by the answer of the Quidnick Co. and others, pp. 80 and 83, that they were not advised as to the extent of the proceedings on the executions of Randolph and Waterman, and, indeed, the wholesale attempt on those executions to grasp these vast amounts of property could not be understood until the facts were brought together in this record.

F

Every other defense which has been made in this Court was distinctly set up in the answers, and has been constantly insisted on.

The proceedings of the State court were distinctly set up, covering many pages of the pleas and answers.

So were laches, acquiescence and limitations in the answers, record pp. 62, 64, 80 and 81.

By the allegations of the answer, record pages 80 and 83, the validity of the entire line of proceedings, both of Randolph and Waterman, including those on the executions, were fully, emphatically and distinctly denied; and the complainant, from the time of the filing of that answer, was put on his guard to see and to prove that they were in all respects correct.

These proceedings were the very foundation of his title; and, unless they were correct, he had no standing in court, and he was seasonably and distinctly warned that he would receive from the respondents no aid on this score.

G

That the shares seized by the sheriff were properly advertised the appellants seek to maintain, p. 4, by the fact that a copy of the advertisement is attached to the execution.

The proper evidence of that fact is, of course, the officer's return; but waiving that, even if what appears on pp. 206-7 would be evidence of the mere form of the notice, both that and the return fail to state how, when and where it was given.

It cannot justly be claimed, as relied on by appellants, p. 4, that the fact that the stock was not sold until twelve days after the seizure, affords any presumption of the notice given, nor can so important a gap as this in a sheriff's return be filled by presumption.

Nor is it the law of Rhode Island that, with reference to corporate stocks, the title of the purchaser can be maintained by the judgment, levy and deed without any return, as claimed p. 4; although it might be otherwise as to movables.

This is fully covered by the authorities cited on our brief.

H

Commencing p. 5, running through to p. 20, and beginning again on p. 39, and running through to the close, the appellants discuss the statute of 1877, which afterward became sec. 25, chap. 155 of the public statutes of Rhode Island, or Revision of 1882, is the basis of our point 3, p. 14 of our brief, and is elaborated in Bank *v.* Francklyn, 120 U. S., 747.

The appellants tell us, p. 5, that Waterman was a workingman, and again, p. 24, remind this Court that it is now asked to take away his hard earnings.

The same old workingman also appears elsewhere at various points in the appellants' briefs, and was personally introduced to the Court several times on the oral arguments.

So far as expressed in the record, the only share of the several hundred thousand dollars sought to be recovered in this case, which this old workingman has received, or is likely to receive, is $175, for which the stock was sold on his execution, less his legal expenses. If there was any balance, he has undoubtedly long since spent the pittance, and nothing this Court can do will interfere with it.

If, however, this is intended as an admission of a matter as to which there seems to be a moral certainty, that this suit is in the interest of some citizen of Rhode Island and not of the Randolph estate, let the appellants put this fact on record and thus send back these issues from the Federal to the state courts!

It is not quite easy to understand the position of the appellants with reference to this act of 1877, which on revision became sec. 25, chap. 155 of the Public Statutes; but the pith of it seems to be as follows, namely: —

Sec. 3 of the act of 1877 repealed inconsistent statutes.

The act of 1876 is not expressed to be repealed in the repealing chapter of the Revision, sec. 3 of the Statute of 1877 is not re-enacted in the Revision, while the repealing chapter, namely 260, of the Revision expressly covers the whole of that act.

Thus it is claimed that, by the repeal of the whole of the act of 1877, including sec. 3, with an omission to repeal the act of 1876, the Public Statutes, or Revision, of 1882 have re-enacted the statuteof 1876.

That any court would construe such to be the operation of a Revision is incredible.

The narrow presumption that the repeal of a statute revives a statute which it repealed has no application to a Revision, the express purpose of which was not to change, but merely to codify the law.

This did not revive chapter 555 of January, 1876, by reason of the provisions of Sec. 7 and 8 of said chapter 260, which are as follows:

SEC. 7. No act which has been heretofore repealed shall be revived by the repeal contained in this chapter of any of the acts hereby repealed.

SEC. 8. The repeal in this chapter of any statute or part of a statute heretofore repealed, shall not be construed as a declaration or implication that such statute or part of a statute has been in force at any time subsequent to such first repeal.

Furthermore Sec. 3, of Chap. 260, Public Statutes provides in its last clause that "the proceedings in every such case shall be conformed, whenever necessary, to the provisions of the Public Statutes."

The practice of the state of Rhode Island has conformed to the above change in the law, and no question has ever been raised under it for the past thirteen years.

But independently of this the matter is one beyond doubt.

So far as we are concerned, the act of 1876, and all other statutes authorizing the seizure of stockholders' property on the primary execution which issued against the corporation, were cut up by the act of 1877 without the aid of sec. 3.

It is not necessary for us to consider what acts or parts of acts were repealed by that sec. 3; but so long as secs. 1 and 2, or the Revision of them, remain in force, and whether there was any repealing section or not, it is unlawful under the laws of Rhode Island to seize stock on an execution, as was seized in this case the stock of Fanny and Mary Sprague on the execution of Waterman *v.* The Sprague Mnf. Co.

J

On p. 11 of the second supplemental brief the appellants claim that, as Fanny and Mary Sprague had never been imprisoned, sec. 1 of the act of 1877 did not apply to them, resting their argument on the word "such."

This is a curious construction; because neither Fanny nor Mary Sprague, nor any person, ever could be imprisoned, and therefore by this construction there could be no property whatever to which the section could apply.

K

On pp. 41 and 42 of appellants' second supplemental brief of this suit it is claimed that section 1 of the act of 1877, afterward sec. 25 of the Revision, did not apply to the Waterman execution, because it uses the word "attach;" and it is claimed that the word "attach" is never applied to the levying of an execution.

The fact, however, is that in this case the legislature did thus use it.

To many lawyers this seems an unusual use of the word; and yet we are informed that it is not uncommon in Rhode Island.

L

On p. 14 of appellants' second supplemental brief it is claimed that the act of 1877 as applied to this case is unconstitutional.

The position of the appellants as to the nature of Waterman's right to proceed against Mary and Fanny Sprague, is not easily understood, and seems to be inconsistent.

In their main brief, pp. 150 and sequence, reaffirmed in this supplemental brief, p. 38, they seem to claim that, inasmuch as the indebtedness of the Sprague Manf. Co. exceeded one million dollars, there was no liability which could be enforced against the stockholders, and that therefore Mary, Fanny, Amasa and William Sprague could not recognize themselves as under any liability as stockholders of that corporation, and so could not properly unite in the mortgage of Nov. 1, 1873.

This would seem to go deeper even than the statute of 1877 and cut up by the roots Waterman's proceedings against Mary and Fanny.

Also this supplemental brief speaks of this liability as a penalty, and as one which dies with the stockholder.

We do not think it necessary to attempt to follow out all the windings of the appellants upon this point.

It seems to us that the act of 1877 is far within the principle of Tennessee *v.* Sneed, 96 U. S. 69; and having been emphatically declared constitutional by this Court in Bank *v.* Francklyn, 120 U. S. 755, although the ruling was possibly

not essential to the decision of that case, we do not deem it necessary to discuss the question.

The peculiar nature of the liability as explained in Bank *v.* Francklyn, 753 and 755, together with the fact that the act of 1877 was passed many years before Waterman attempted to enforce his claims, are not to be forgotten in this connection.

M

It is to be noticed that this supplemental brief in no way attempts to reply to our attack on the proceedings on Randolph's execution.

N

Concerning p. 25 of appellants' second supplemental brief, distinction is there attempted to be set up between the "*res*" and "corporate stock."

What the bill is after in this case is the *res*, or a part of it, that is, the property sold the Union Company.

With reference to this part of the case, touched on by our original brief, p. 9, and pp. 18 to 23, we know nothing which requires further discussion of the distinction between the "*res*" and "the corporate stock."

What we have undertaken to show is, that under proceedings commenced in 1881, which were before Randolph or Waterman seized or attached any of the stock in question, and which gave the State court full jurisdiction over the corporation, its assets and doings, the Rhode Island Supreme Court recognized as valid the proceedings of the corporation which resulted in the sale to the Union Co., which this

bill as supplemented attacks, and directed the delivery of the property in accordance with the terms of that sale.

The proceedings referred to in Chaffee *v.* Quidnick Co., 14 R. I. p. 83, cited in appellants' supplemental brief, p. 25, are not those on which we rely, and are not proven in any part of this record

As said on p. 25 above referred to, it is true Randolph was not a party to these proceedings; for, when they commenced in 1881, he had no interest and could not be made a party. But whatever interest he acquired was *pendente lite.*

In the same connection, referring to the obser vations at the foot of p. 26 and on p. 27 of appellants' second supplemental brief, we think we have already shown on our main brief, pp. 21 to 23, that the proceedings for the removal of Mary and Fanny Sprague, and the appointment of Pomroy, commenced before the case at bar, and were continuous and sufficient to establish a voting power in Pomroy.

As to the observation on p. 27 of the second supplemental brief that the transfers from Mary and Fanny Sprague were without seal, acknowledgment or registry, and have no "resemblance" to deeds of assignment, we think it not necessary to prolong discussion.

Resemblances are not important at law; essence is what is looked at.

So far as completing a transfer of the title to the stock was concerned, no formalities were, of course, required, ex-

cept that they should appear on the transfer books of the corporation, as they did.

As to the position that a transfer not under seal does not come within the provisions of chap. 237 pub. stat. of R. I. entitled "Of Proceedings in Insolvency:"

(1.) Although sec. 1 uses the language "deed of assignment," sec. 7 uses the expression "any voluntary assignment;"

(2) The statute is entitled: "Of Proceedings in Insolvency," and must be held to cover all cases of assignments for benefit of creditors,—assignments of personal property as well as assignments of real estate;

(3.) No seal or acknowledgement is required for the conveyance of personal property; and the statute should not be construed to require new formalties.

However, all these questions were for determination by the State court in the proceedings for the appointment of Pomroy as successor of Mary and Fanny Sprague, and have there been adjudicated.

In bringing these transfers to the attention of the Court, we do not waive the underlying title under the mortgage which, independently of any formal title in Pomroy, defeats Randolph's interest, and which is our real reliance.

O

At the foot of p. 30 of their second supplemental brief, the appellants insert the garnishee declaration of Chaffee.

This is merely the formal affidavit preliminary to examination, and signifies nothing except that it is his claim that he had no estate for which he was liable to be garnished.

If fairly questioned we think appellant's counsel would admit that this statement, in its proper connection, is of no significance with reference to the case at bar; and it strikes us that its use by dislocation does not appear absolutely ingenuous.

P

On p. 31 of this second supplemental brief the appellants call attention to an alleged "remarkable scheme developed in the evidence of Amasa Sprague;" and this requires us to examine somewhat the nature of this evidence and of the evidence of the other members of his family.

It was given more than ten years after the event; and the record shows that, even if the parties giving it have no direct interest in this case, they are acting under some apparent inducement to testify hotly against the mortgage and its incidents.

The development of this commences with the bill of Moulton *v.* Chafee concerning the title to Canonchet, filed in 1882, rec. p. 298.

Wm. Sprague was made a party defendant, the bill having an innocent air, and representing him simply as in possession and disputing Chafee's title.

Sprague answered, rec. pp. 327 and 333, alleging in many forms the invalidity of the mortgage of Nov. 1, 1873.

The replication was filed by the counsel for the apparent complainant, Moulton, rec. p. 341; after which they substantially disappear.

A careful examination of the record from that time on, especially with reference to the taking of the testimony, will show that the litigation was carried on as against Mr. Chafee by the counsel of Sprague, with very slight interference, if any, by the counsel for the nominal complainant.

In this particular there is a singular analogy between that bill and the bill in the case at bar, in each of them the counsel for the nominal complainant disappearing after the filing of the replication, and the litigation against the mortgage being thereafter actively prosecuted by the recognized counsel of the Spragues.

So far as the case of Moulton *v.* Chafee is concerned, light was thrown on this transaction by the testimony of Lyman, p. 379, indicating that the cash payment on the purchase of Canonchet by Moulton of about $3,000 was made by Sprague; and this indication is made effective by the fact that no attempt is anywhere made to refute or contradict it.

It happened that Mr. Martin, the notary who took the acknowledgement of the mortgage of Nov. 1, 1873, is deceased; so that the whole family, including Latham, the brother-in-law, were, after the lapse of many years, led into the imagination, and therefore led to testify that the deed was not acknowledged on the first of December, when it purports to have been.

But the depositions of Hart, Tillinghast and Thurston, pp. 431, 436 and 476, involve such an irresistible conclusion

that they as counsel and Martin as notary did their duty in this particular, the only result of the testimony of the family on this point is to destroy its value with reference to all matters in the record.

The following general observations may be made in regard to it: —

1. It was drawn out in such way as to be really the testimony of the lawyers, and not of the witnesses — see, for example, the deposition of Amasa Sprague, question 37 and answer, p. 181.

2. The statements of an entire family made in 1884, charging themselves with schemes to defraud their creditors in 1873, necessarily discredit the parties making them.

3. Many of their statements were extravagant and absurd on their face; as, for example, those of Sprague p. 413, and his answer in Moulton *v.* Chaffee, p. 332, that the property conveyed Mr. Chaffee was enough to pay the liabilities at the rate of three dollars of property for one dollar of debt; and in the same class are his attacks on the mortgage under oath, in his answer in Moulton *v.* Chaffee, p. 330, as also the unreasoning distinction in his amended answer, Feb. 10, 1883, pp. 333 and 334, between the attachment of the Franklin Institution of Savings and that of Randolph.

Under these circumstances it was inevitable that the Circuit Judge should have rejected the whole of this testimony, as he evidently did.

All the essential features of it were produced in the case of Moulton *v.* Chafee, and in the case at bar it was only somewhat enlarged upon.

In the former the opinion of the Court says as follows:

"The evidence shows that the conveyance to Chafee was made in good faith, the grantors undoubtedly expecting at the time by this means to pay their creditors in full without exhausting the whole property."

Moulton *v.* Chafee, 22 Fed. Rep. 26-28.

Q

What is said on the appellants' second supplemental brief, p. 32, concerning the testimony of Mary Sprague as to her transfers, is disposed of by what we have said in relation to the testimony of the family, with this addition: — that the appellants' counsel declare her to have been a lady between eighty and ninety years of age, sufficient to account for all peculiarities of memory.

She turned over to Mr. Chafee, not only this stock in question, but all her stocks, p. 518, which are listed pp. 515 and 516; and we may well say about her as was said in substance by Judge Colt concerning the mortgage made by the corporation, that time has been full of opportunities for her to disavow the transfers, if they were not her act, and she has failed to do so.

R

Pages 33 of appellants' second supplemental brief and sequence relate to the form of the transfers of the Quidnick Co. stock.

After transfers of stock are actually made and signed upon the transfer books of a corporation, as was done in this case, the books themselves and the transfers upon them being actually produced before the examining magistrate, — Gould, pp. 538-39, and elsewhere in the record,— it seems queer to say that such transfers are mere entries which, "while they may form a link in the evidence to prove that such stock has been actually transferred, standing alone are no evidence whatever of the fact."

Transfers thus made are themselves the "fact" in the same sense that a deed of real estate, executed, acknowledged and recorded, is the "fact" and not merely the evidence of it.

We do not understand from this brief whether the appellants desire to consider the by-laws and charter of the Quidnick Co. in or out of the case. They are not in the case, for the simple reason that nobody at the Circuit challenged the regularity of these transfers.

This is one of the class of questions concerning merely the form of proof, or the regularity of proceedings, which are clearly waived unless objections are made in the court below.

However, either with or without the charter and by-laws, these transfers are all regular.

Independently of the charter and by-laws they are to be examined at common law; and there can be no question that at common law they are amply sufficient.

We need not weary the Court by citing authorities on this elementary question.

The only objections made to them under the charter and by-laws are that the old certificates are said not to have been surrendered, and that the corporation had a certain right under its charter to buy in the stock.

Neither of these are matters in which Randolph or Waterman were concerned. One of them is certainly merely directory, stock being transferred daily and the transfer unquestioned under like provision, even though the old certificates have not only been not surrendered, but have been lost.

This a mere matter of detail relating to the interests and safety of the corporation, which it may insist on or may not. If it permits the transfer to be made, that is the end of it.

Independently of all this, by the provisions of the trust mortgage Chafee received an equitable title sufficient for the purposes of courts sitting in equity.

As to the other matter we say:

1. It is a right reserved for the benefit of the corporation in which persons situated like Randolph and Waterman have no concern.

2. It evidently relates to a sale of the stock and not to a pledge of it as security.

The corporation does not by the pledge lose its right to acquire the fee of the shares when they are finally disposed of.

3. To give any other construction would be to hold that the property could not be used for paying debts, which is not admissible.

The stock could undoubtedly be taken on execution; and what may be done by force of law may be accomplished voluntarily.

4. This proposition strikes at the basis of Randolph's entire claim, as he proposes to take the stock away from the corporation as well as from us.

S.

At the foot of p. 38 of the appellants' second supplemental brief, it is claimed that the stockholders cannot be liable for debts of the corporation in excess of one million dollars.

We have already referred to this as entirely inconsistent with the claim to the stock of Mary and Fanny Sprague sold on the Waterman execution.

We need not, however, weary the Court by discussing this proposition. It is evident that the provision is purely directory, intended for the internal regulation of the affairs of the corporation, and in no way affects the rights of creditors. No creditor is bound to ascertain, what he can rarely if ever